

***United States Court of Appeals
for the Second Circuit***



APPENDIX

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pgs.

75-1211

IN THE
United States Court of Appeals
For the Second Circuit

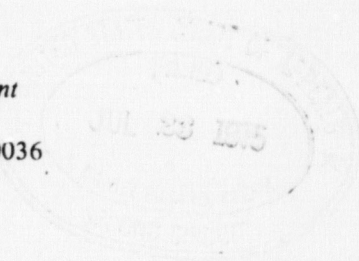
No. 75-1211

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
against
SAMUEL KAPLAN,
Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

APPELLANT'S APPENDIX

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DOCKET ENTRIES

THE UNITED STATES

vs.

No. 72 CR 851

SAMUEL KAPLAN

Proceedings

7-11-72	Before DOOLING, J. - Superseding indictment filed.
7-25-72	Before DOOLING, J. - Case called - deft. and counsel John Pollok by J. Hoffman present - deft. arraigned and enters a plea of not guilty - bail continued.
7-25-72	Notice of Appearance filed.
7-26-72	Government's notice of readiness for trial filed.
9-18-73	Before TRAVIA, J. - Case called and adjd. to 9/24/73 - Counsel Jeffrey Hoffman is relieved.
9-24-73	Before TRAVIA, J. - Case called and adjd. to Oct. 5, 1973 for trial.
10- 5-73	Before TRAVIA, J. - Case called - adjd. to 10/26/73 for trial.
10-12-73	Before TRAVIA, J. - Case called - marked ready for trial on Nov. 5, 1973.
11- 5-73	Before TRAVIA, J. - Case called and adjd. to Nov. 16, 1973 for disposition.

11-16-73 Before TRAVIA, J. - Case called and adjd. to 12-7-73 for disposition - bail continued.

12- 7-73 Before TRAVIA, J. - Case called - adjd. to 12/14/73 on consent.

12-14-73 Before TRAVIA, J. - Case called - adjd. to 2-1-74 to set trial date.

1-17-74 Stenographers transcript filed dated November 16, 1973 (placed in 72 CR (illegible).)

2- 1-74 Before TRAVIA, J. - Case called - deft. and counsel present - case marked subject to case on trial before Judge Weinstein.

2- 8- 74 Before WEINSTEIN, J. - Case called - deft. and counsel present - trial ordered and begun - jurors selected and sworn - trial cont'd. to 2-11-74.

2-11-74 Before WEINSTEIN, J. - Case called - deft. and counsel James La Rossa present - trial resumed - deft. moves for dismissal of the indictment and for Judgment of Acquittal - denied by the court - defts. (sic) renews motion for dismissal - court denied the application. On application of counsel for the deft. Indictment 72 CR 31 is dismissed as to both defts. - jury retires for deliberation at 3:45 p.m. - order of sustenance signed - jury retires for the day at 9:00 p.m. to resume its deliberations. Trial con'd. to Feb. 13, 1974.

2-11-74 By WEINSTEIN, J. - Order of sustenance filed (dinner).

2-13-74 Before WEINSTEIN, J. - Case called - deft. and counsel James La Rossa present - jury resumes deliberations at 10:00 a.m. - jury returns and renders a verdict of guilty as to count 1 and 2 - jury polled and discharged - trial concluded - deft. reserves motions - bail revoked and deft. remanded.

2-22-74 Before WEINSTEIN, J. - Case called - bail motion adjd. to Feb. 25, 1974 at 9:45 a.m.

2-25-74 Before WEINSTEIN, J. - Case called - deft. and counsel J. La Rossa present - deft's motion for bail argued and granted - 2 letters marked as Court Ex. 1 and 2 - bail set at \$100,000 secured by \$2500 in cash - deft., wife and mother-in-law to sign bond and friend's house to be put up as security.

2-25-74 By CATOGGIO, Magistrate - Order for acceptance of cash bail filed.

3- 6-74 4 volumes of stenographers transcripts filed. (Pgs. 1 to 252).

4-19-74 Before WEINSTEIN, J. - Case called - deft. and counsel present - sentence adjd. to 4-26-74.

4-26-74 Before WEINSTEIN, J. - Case called - deft. and counsel Mr. La Rossa present - deft's motion disputing the probation report - hearing ordered and begun - hearing concluded - deft. sentenced to imprisonment for a period of 8 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) on each of counts 1 and 2 concurrently.

4-26-74 Judgment and Commitment filed - certified copies to Marshal.

4-29-74 Notice of Appeal filed.

4-29-74 Docket entries and duplicate of notice of appeal mailed to court of appeals.

5- 8-74 Letter to chambers from James M. La Rossa dated 5-6-74 filed re: (illegible) - and request for hearing on 5-8-74 at 9:30 a.m. - so ordered by Judge Weinstein.

5- 8-74 Before WEINSTEIN, J. - Case called - deft. and counsel James La Rossa present - deft's motion to set aside the verdict is denied.

5- 9-74 Record on appeal certified and handed to Joan Gill for delivery to the court of appeals.

5-13-74 Acknowledgment received from court of appeals for receipt of index on appeal.

6-13-74 Stenographers transcript dated 5-8-74 filed.

3- 7-75 Opinion and certified copy of judgment received from court of appeals filed reversing judgment of the district court and remanding case for further proceedings.

3-13-75 Before JUDD, J. - Case called - deft. and counsel James La Rossa present - conference held and concluded - adjd. to 4-28-75 for trial.

4- 9-75 Record on appeal received from court of appeals - acknowledgement mailed.

4-21-75 Deft. requests for examination of prospective jurors; deft's trial memorandum and deft's requests to charged filed.

4-24-75 Govt's trial memorandum filed.

4-28-75 Before JUDD, J. - Case called - deft. and counsel Gerald Shargel present - trial ordered and begun - jurors selected and sworn - Govt. opens - deft. - Govt' rests - Deft's motion to dismiss argued - motion denied - trial cont'd. 4/29/75 at 10:00 a.m.

4-29-75 Before JUDD, J. - Case called - deft. and counsel G. Shargel present - trial resumed - deft. rests - both sides rest - deft's motion to dismiss argued and denied - deft. sums up - Govt sums up - Judge charges jury - Marshals

sworn - alternates discharged - order of sustenance signed - jury retires to deliberate at 1:05 p.m. - jury returns at 2:35 p.m. to have question answered - jury resumes deliberations at 2:40 p.m. - jury returns at 4:05 p.m. and rendered verdict of not guilty on count 1 and guilty on count 2 - trial concluded - jury discharged - Govt's motion to remand deft. - motion argued - bail set at \$100,000 surety bond to be posted by May 1, 1975 at 4:00 p.m.

- 4-29-75 By JUDD, J. - Order of sustenance filed.
- 4-29-75 Stenographers transcript filed dated 4-28-75.
- 4-30-75 Before JUDD, J. - Copy of order releasing bail filed.
- 5- 2-75 Before JUDD, J. - Case called - deft. and counsel present - deft's motion to dismiss jury's verdict argued - motion denied - deft. sentenced to imprisonment for a period of 8 years pursuant to T-18, U.S.C., Sec. 4208(a)(2) plus a parole term of 10 years - execution of sentence stayed pending appeal - bail cont'd. - deft. advised of right to appeal.
- 5-23-75 Judgment and commitment filed - certified copies to Marshal.
- 5-27-75 Notice of Appeal filed.
- 5-27-75 Docket entries and duplicate of Notice mailed to the Court of Appeals together with Form A.
- 6- 2-75 Order received from the Court of Appeals filed that the Index to Record on Appeal be docketed on or before June 23, 1975.
- 6-17-75 Two stenographic transcripts filed (one dated 4-28 and one dated 4-29-75).

6-20-75

Record on appeal certified and mailed to court
of appeals.

A TRUE COPY
ATTEST

DATED: 6/20/75

LEWIS ORGEL
CLERK

BY _____
DEPUTY CLERK

INDICTMENT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X
UNITED STATES OF AMERICA,

-against-

No. 72 CR 851

SAMUEL KAPLAN,

Defendant.

-----X

THE GRAND JURY CHARGES:

COUNT ONE

On or about the 6th day of January, 1972, within the Eastern District of New York, the defendant SAMUEL KAPLAN did possess, with intent to distribute, approximately 25.6 grams of heroin, a Schedule I narcotic drug controlled substance.

(Title 21, United States Code, §841(a)(1)
Title 18, United States Code, §2).

COUNT TWO

On or about the 6th day of January, 1972, within the Eastern District of New York, the defendant SAMUEL KAPLAN

knowingly and intentionally did distribute approximately 25.6 grams of heroin, a Schedule I narcotic drug controlled substance.

(Title 21, United States Code, §841(a)(1) and Title 18, United States Code, §2).

A TRUE BILL

Foreman

UNITED STATES ATTORNEY
EASTERN DISTRICT OF NEW YORK

1
2 THE COURT: Are you ready to proceed
3 with the trial?

4 MR. SHARGEL: Defendant is ready
5 for trial.

6 THE COURT: I have a trial memorandum
7 from both sides and voir dire questions from
8 Mr. Shargel.

9 It seems to me from reading the Court
10 of Appeals opinion that the net effect of it,
11 while there are some uncertainties, that the
12 court did not mean to say that the telephone
13 conversation between Lang and Alleva is
14 necessarily inadmissible of a statement of a co-
15 conspirator. I do not know whether I can
16 determine the admissibility now or whether I do
17 not have to wait and see what fact develops at
18 this trial with respect to other non-hearsay
19 evidence of participation.

20 MR. KAPLAN: Your Honor, the Government's
21 position is that your Honor should make that
22 determination prior to Mr. Alleva's testimony
23 because of the nature of the testimony and the
24 fact that the conversation precedes the January
25 6 meeting. Of course it was taken out of order

1
2 for orderly presentation of this case and
3 I would suggest to the Court perhaps the
4 determination should be made prior to the
5 testimony of Alleva.

6 MR. SHARGEL: The thing I would like
7 to add is that it is true from the opinion
8 of the Court of Appeals it did not necessarily
9 conclude as a co-conspirator statement it was
10 inadmissible but by the same token they did not
11 conclude it was admissible and I think I would
12 address myself to that in my memorandum of law.

13 I think one, I would like to press my
14 claim as to its inadmissibility as the law of
15 the case.

16 THE COURT: No, that is not so.

17 MR. SHARGEL: Well, for the record I
18 would like to press that claim.

19 THE COURT: I studied the record and it
20 would have been sustained had he allowed the
21 hearsay to come in under the co-conspirator
22 exception.

23 MR. KAPLAN: I would submit if you read
24 the opinion addressed to the petition for re-
25 hearing Judge Frankel backs off from that

1 position somewhat.

2 THE COURT: Was there anything written?

3 MR. KAPLAN: There was a petition for
4 rehearing. I thought it was in the court file.

5 MR. SHARGEL: There was a three-page
6 opinion written on the opinion for rehearing.

7 THE COURT: Mr. Kaplan provided me with
8 a copy but it did not appear to me there was
9 any opinion on it.

10 MR. SHARGEL: There is, sir. If I do
11 not have it with me I have the citation.

12 MR. KAPLAN: I have it, your Honor.

13 THE COURT: I take it the opinion on
14 rehearing says that they do not assume that the
15 trial judge would or should have made the
16 determination and therefore I have to consider
17 it now.

18 MR. SHARGEL: That is the particular
19 reference I was going to direct your Honor's
20 attention to, slip opinion Page 6092 I believe
21 it is, the end of the typewritten copy you have.

22 MR. KAPLAN: If your Honor reads that
23 opinion in conjunction with the Government
24 petition for rehearing I think that it is clear
25

1 that if the court did not agree with the
2 Government's position here that it might have
3 been a harmless error if Judge Weinstein had
4 made the finding as to the co-conspirator
5 exception they would have said so. Yet the
6 Court of Appeals merely distinguishes Rosenstein.
7 Thus I am replying if not being explicit in this
8 case, your Honor, that the admissibility of the
9 statement would have come in properly under the
10 co-conspiracy to hearsay.
11

12 MR. SHARGEL: I think that argument is
13 disingenuous. If you look at the language here,
14 the court says on Page 6092 it is an open
15 question and that is why I address myself to the
16 issue in the brief that the evidence was
17 insufficient and submitted that for your Honor's
18 consideration, that to allow hearsay statements
19 to come in as of January 5 with reference to a
20 conversation of January - -

21 THE COURT: Well, what is the evidence?
22 Is it just the fact it is shortly before the
23 sale?

24 MR. KAPLAN: If I may set the stage,
25 your Honor, in the January 6 meeting Agent

1
2 Alleva comes to the January 6 meeting in Lang's
3 apartment after having conducted certain business
4 with Lang on previous occasions preceding the
5 January 5 telephone conversation. In fact, he
6 has purchased heroin from him. Now, he comes to
7 the apartment on January 6 and Kaplan is present.
8 There were no introductions between Alleva and
9 Lang and Kaplan. It is thus apparent that
10 everyone in the apartment knows who everyone is.

11 In addition, there is a conversation
12 between Kaplan, Alleva and Lang which indicates
13 the prior knowledge of the dealings between Lang
14 and the Agent Alleva. The conversation on
15 January 5 is basically the following. Alleva
16 calls Lang and tells him that the prior quantity
17 of heroin was of poor quality. Lang represents
18 that the next day they will be able to have a
19 transaction.

20 MR. SHARGEL: If I may, may we excuse
21 Agent Alleva from the court during this courtroom
22 discussion?

23 MR. KAPLAN: He testified at the previous
24 trial, he knows what the testimony is.

25 MR. SHARGEL: It may go beyond that with

1
2 regard to what I say.

3 THE COURT: All right, excuse him.

4 (Agent Alleva left the courtroom.)

5 MR. KAPLAN: The January 5 conversation
6 alludes to the fact the quality previously was
7 poor. Lang then represents to the agent that
8 the quality will be good on tomorrow's meeting
9 and that "My connection will be there," thus
10 representing to the agent that his man or his
11 source of supply will be there to make sure
12 that the quality is acceptable to Agent Alleva.

13 I would submit the January 6 conversation
14 and the January 6 meeting with the lack of
15 introductions and the statements that are made
16 by Kaplan that the quality of the heroin was
17 good leads us to believe that Kaplan was fully
18 aware of the January 5 conversation and that
19 Kaplan was aware prior to that point of the
20 prior dealings between Lang and Alleva. Thus,
21 the statement of January 5 would come in as a
22 statement made during the course of and in the
23 furtherance of the conspiracy by Lang, who is a
24 co-conspirator of Kaplan.

25 I think you have to look at this January 6

1
2 meeting and the unusual events that take place
3 there. I think Judge Weinstein himself in the
4 first trial said he would be warranted based
5 upon that January 6 meeting - -

6 THE COURT: When did he make his ruling?

7 MR. KAPLAN: He made that statement,
8 your Honor, and I quoted that in the memorandum
9 of law. Apparently both Mr. Shargel and Judge
10 Frankel seemed to overlook that fact.

11 MR. SHARGEL: I am in good company.

12 MR. KAPLAN: On Page 54 to 55 of the
13 transcript Judge Weinstein said he had been
14 warranted based upon following the testimony of
15 the agents and based upon how he described Mr.
16 Kaplan's reaction in believing independent of
17 the hearsay that there was a prior existing
18 conspiracy and that it is hardly unlikely that
19 it existed one day in advance of the event and
20 so he says in this case he would be entitled
21 to allow it in as a hearsay exception under
22 the conspiracy rule or under the Hillman doctrine.

23 Judge Weinstein went on to say to
24 protect the rights of the defendant he would
25 let it in under the state of mind rule.

1
2 MR. SHARGEL: May I address myself to
3 that, your Honor?

4 THE COURT: All right, go ahead,
5 Mr. Shargel.

6 MR. SHARGEL: I would like to submit the
7 following facts to your Honor for your Honor's
8 consideration before you make this determination.

9 One, the testimony at the prior trial
10 established that Agent Alleva was never introduced
11 nor had he ever met Kaplan prior to January 6,
12 1973.

13 Two, the 3500 material of Alleva which
14 would be inadmissible hearsay, of course, during
15 the trial, quotes Lang on an earlier occasion
16 as saying "I have several sources of heroin" and
17 one is, paraphrasing of course, one is drying up
18 after another, so the evidence does not support
19 a finding that there is one connection or source.

20 Let us assume for the moment arguendo
21 that everything that Mr. Kaplan asserts is true.

22 I refer your Honor most respectfully to
23 the Circuit Court's decision in U.S. versus
24 Berrelli and the evidence taken in the light
25 most favorably to the Government here establishes

1
2 nothing more than the fact that on January 6
3 Lang's connection was Samuel Kaplan, that on
4 January 6 he was the supplier, the seller,
5 the vendor. What we have to find here and
6 most respectfully what your Honor has to find
7 here is independent proof that there was an
8 agreement, an elicited agreement. There is no
9 conspiracy charged but under the aiding,
10 abetting principle your Honor has to find
11 agreement between Kaplan and Lang. There is
12 nothing here to show that Kaplan was more than
13 a vendor and in Berrelli, and I quoted from
14 the language, in Berrelli a single sale does
15 not make the vendor a conspirator with the
16 buyer, with the purchaser.

17 There is no evidence whatsoever to
18 establish there was an agreement or that any
19 agreement had been reached on January 5. It
20 may be in Lang's mind, I will have my connection
21 here, and then he went out and tried to find his
22 connection.

23 There is no evidence, I respectfully
24 submit whatsoever that Mr. Samuel Kaplan and
25 Mr. Frank Lang had entered into an agreement at

1
2 the time of this phone call, at the time the
3 phone call was made. We have no frame of
4 reference timewise to place this in the context
5 of an agreement or conspiracy.

6 If I said to a purchaser of narcotics
7 that I will have my connection there and then
8 went out to seek a connection and there is no
9 evidence whatsoever, I know I am repeating myself,
10 but I think it is very compelling as an argument,
11 there is no evidence that Samuel Kaplan entered
12 into any kind of agreement with Lang at the time
13 the phone call was made.

14 THE COURT: Well, you can refer backwards
15 and forwards and if he was there on Tuesday it
16 is not a decisive inference but it is a
17 permissible inference I suppose that there was
18 an agreement on Monday.

19 MR. KAPLAN: More so than the presence,
20 the mere presence of Kaplan is the circumstances
21 under which these three men met. Alleva walks
22 into the room, there is no introduction by Alleva
23 and Kaplan by Lang. In other words, this
24 transaction takes place without any introduction.
25 In addition, after he received the heroin he

1
2 turns to Kaplan and says, "Why don't one of
3 you guys come down with me?" And Kaplan says,
4 "Why don't you do it yourself?" And Alleva
5 replies, "You guys beat me once already,"
6 implying that he received a poor quality heroin
7 on a prior occasion.

8 Now that statement is significant
9 because Kaplan does not say what are you talking
10 about, I don't know you, I have not met you
11 before - - he doesn't say anything like that.
12 He waves Lang to go down with him, thus
13 indicating the prior knowledge of the dealings
14 between Lang and Alleva.

15 I think it is quite significant in
16 that context, your Honor, that statements made
17 in the course of these conversations on
18 January 6 can be used to infer a prior existing
19 conspiracy. These conversations did not take
20 place in a vacuum. There was something going on
21 in everybody's mind on January 6.

22 MR. SHARGEL: Your Honor knows my
23 argument and I do not want to belabor the point
24 but I would like to put one point on the record.
25 This evidence which Mr. Kaplan has described in

1
2 the past he cannot get away from the fact
3 he stated as being "crucial to the Government's
4 case." Mr. Kaplan described it as crucial to
5 his case. I think the evidence connecting it
6 to a conspiracy in the words of U.S. against
7 Consolidated Laundries is too slight to link
8 Samuel Kaplan to this conspiracy. I think
9 when you balance the fact it is too slight
10 against the fact Mr. Kaplan states it as being
11 crucial to his case, that in fairness to the
12 defendant it should be excluded.

13 I think the question here is a narrow
14 question for the jurors' consideration and I
15 think the Circuit Court of Appeals is very
16 sensitive to it and they reversed because of it.

17 MR. KAPLAN: They reversed for another
18 reason. They reversed because of the limiting
19 instruction not because of the co-conspirator
20 rule.

21 THE COURT: I think if they left me a
22 way to get it in they did not intend I should
23 keep it out.

24 MR. SHARGEL: By the same token they did
25 not tell your Honor to get it in. They left it

1
2 open either way and I think there is an
3 independent or de novo determination that
4 your Honor has to make and I do not think
5 your Honor should take that to mean you
6 should get it in.

7 Let me say once more, how can we
8 ignore Judge Frankel's language? We would
9 have to totally ignore this language and I
10 quote from the original slip of opinion 57997:
11 "In all the circumstances therefore appellant
12 is entitled to a new trial at which this
13 hearsay will be excluded."

14 They knew what the evidence was, they
15 knew it would come back for a new trial. They
16 knew the evidence would be substantially the
17 same. Is this mere rhetoric this statement - -
18 "new trial at which this hearsay will be
19 excluded"?

20 THE COURT: It does not seem to represent
21 the view of the court. I do not know why they
22 left it in.

23 MR. SHARGEL: I do not see any evidence
24 it does not represent the view of the court,
25 Judge.

1
2 THE COURT: Well if that was the
3 ruling for the second trial they would have
4 stopped the opinion there. Then they go on
5 to say why it might be admitted on a different
6 theory.

7 MR. SHARGEL: There is no concurring
8 opinion, there is no dissent and yet we have
9 that language there. I cannot imagine that
10 it is mere rhetoric.

11 THE COURT: I do not think it would be
12 proper for me to exclude it under the opinion.
13 It says they have a clear sense that the judge
14 would have been sustained if he had allowed the
15 hearsay to come in as a co-conspirator exception
16 so I am going to receive it. You have an
17 exception.

18 MR. SHARGEL: I have my exception.

19 (A recess was taken at this point.)

20 THE COURT: All right now, on the
21 voir dire I have Mr. Shargel's requests and I
22 would not be as detailed as he is on the
23 government agent testimony but apart from that
24 the rest seems appropriate.

25 MR. KAPLAN: I would respectfully object

N I C H O L A S A L L E V A, having been first duly
sworn by the Clerk of the Court, testified as follows:

DIRECT EXAMINATION

BY MR. KAPLAN:

Q Sir, are you presently employed?

A Yes, I am.

Q In what capacity?

A Special agent for the United States Department
of Justice, Drug Enforcement Administration.

Q For how long a period of time have you been so
employed in this capacity?

A I am employed as a special agent for approxi-
mately four years. The Drug Enforcement Administration
came into being approximately two years ago. Prior to that
it was known as the Bureau of Narcotics & Dangerous Drugs.

Q The name was changed?

A Yes, sir.

Q Have your duties continued over the years?

A Yes.

Q Were you so employed in late 1971 or early
1972?

A Yes, I was.

Q What specific duties do you perform as a
special agent?

A One of my prime functions is to act as an undercover agent.

Q Tell the jury what you mean "act as an undercover agent."

A I assume an identity correspondent to the type of person that I am going to work on --

MR. SHARGEL: I am going to object to this unless it is with reference to this case.

THE COURT: I think a little introduction about undercover agent activity is permissible. I will overrule the objection. You may proceed.

A And with that new identity an undercover agent attempts to either purchase evidence or to gather intelligence.

Q Were you acting in that capacity in late 1971?

A Yes, sir, I was.

Q Agent Alleva, I direct your attention to the specific case you were involved with regarding one Frank Lang. Do you recall that individual?

A Yes, sir, I do.

Q Can you tell us how it came about you met Mr. Lang?

A I was introduced to Mr. Lang through a government cooperating individual.

Q How many occasions did you meet Mr. Lang?

A Approximately four times.

Q Do you recall the approximate date or month we are talking about?

A Through the period of November and December, 1971, and into January, 1972.

Q What was your relationship with Mr. Lang?

A We had conducted a certain business transaction on November 29, 1971.

Q What did you receive?

A I received one ounce of heroin from Lang.

Q What did you give Mr. Lang?

A \$1300 official government money.

Q How did it come about this official government money was given to Mr. Lang?

A When a purchase is to be made the government agent, undercover agent, secures the funds from the United States Treasurer. Actually it is a cashier in our Department of Justice. The serial numbers are recorded and the funds are then turned over naturally in a manner pertaining to the undercover investigation. Funds are turned over to the individual and the individual turns over the narcotics to us.

Q Other than the one incident in which you had this transaction with Mr. Lang, you said you met him on other occasions; is that right?

A Yes, I did.

Q For what purpose?

A The purpose was to complain about the quality of the purchase.

Q Can you describe the appearance of Mr. Lang to the jury?

A Yes, I can. He was in his early twenties, approximately five-foot-five, long scraggly light brown hair and thin, a thin frame.

Q Do you know his present status?

A He is deceased.

Q Directing your attention to January 1972, do you recall a telephone conversation which you had with Mr. Lang?

A Yes, I did.

Q On what date?

A On January 5.

Q Can you tell us who made the phone call?

A I called Lang.

Q Where did you call him?

A At his residence.

Q What did you say to him and what did he say to you?

MR. SHARGEL: Note my objection to this,

your Honor.

THE COURT: Yes, objection is overruled and you have an exception.

A The phone call was an extension of our discussion as to the quality --

MR. SHARGEL: I object as not responsive to the question.

THE COURT: Overruled. Go ahead.

A It was an extension of our discussion as to the quality. I told him I was completely dissatisfied with the previous purchase and that I wanted a better quality on the next purchase. Lang told me that this would be done as his connection would be at his house tomorrow at two p.m. and that I should go there with another \$1300 and I could get an ounce of heroin which would be much better quality.

Q What did you say?

A I agreed.

Q Had you previously been to his residence?

A Yes, I had.

Q Can you tell the jury what the address was?

A 1939 Homecrest Avenue, Brooklyn.

Q As a result of the telephone conversation on January 5, what if anything did you do?

A I went to Lang's residence on the 6th at two

o'clock.

Q Were you accompanied by anyone?

A I was alone. There were surveillance agents in the area but I was alone.

Q What if anything did you have in your possession or in your official government car?

A I had \$1300 in official government funds, again previously serialized, and noted.

Q Where was that?

A In the trunk of my official government car.

Q Where did you park the car?

A I parked it on Homecrest somewhat I guess south of the residence, approximately thirty feet.

Q Where were the surveillance agents located?

A I do not recall exactly their exact location.

Q What was the approximate time you arrived at the Lang residence?

A Approximately two p.m. in the afternoon.

Q Can you describe to the jury the appearance of the Lang residence, what type of house was it?

A I would say one family. It is a one-family house, I guess it is wood and shingle frame house, and it has several stories. I am not sure if it is two or three stories, I don't recall. I have only been to the second level

and I believe there is a staircase above it.

Q What happened when you arrived at the residence at two o'clock on the 6th of January?

A Lang's mother-- I rang the bell and Lang's mother let me in.

Q Then what happened?

A As his mother let me in, Lang began coming down from his upstairs bedroom and he greeted me from the stairs.

Q And then?

A Then he bid me to go up with him and asked me to come up to his room with him and I did.

Q Had you previously been inside his bedroom?

A Yes, I had.

Q You say you proceeded to the bedroom; is that right?

A That is right, sir.

Q Will you describe to the jury and Court what his bedroom looked like?

A He had no bed, he had a mattress on the floor. He had one chest of drawers and I guess you would call it a night table. He had psychedelic posters and psychedelic lights, psychedelic posters on the wall and psychedelic lights in the room.

Q When you arrived in the bedroom with Mr. Lang

1
2 was there any person other than Mr. Lang present?

3 A Yes, there was.

4 Q Who was that?

5 A Samuel Kaplan.

6 Q Would you point him out for therecord, please.

7 A (Indicating).

8 MR. SHARGEL: Let the record reflect he has
9 pointed out Mr. Samuel Kaplan.

10 Q Specifically where was Mr. Kaplan located in
11 the room?

12 A Mr. Kaplan was on the mattress where normally
13 the head of the bed would be.

14 Q What position was he on the mattress?

15 A He was half lying and half sitting, kind of
16 propped up.

17 Q You say this mattress was lying on the floor,
18 is that right?

19 A That is right, sir.

20 Q There was no spring or anything like that?

21 A No, sir.

22 Q When you observed Mr. Kaplan did you observe
23 his dress at that point in time?

24 A Yes, I did.

25 Q How was he dressed?

50

A He had on a white T-shirt, commonly referred to as a skivvy shirt and blue denim dungarees, bell bottoms.

Q By the way, when you say Mr. Kaplan was there any introduction that was made by Mr. Lang?

A No, sir.

Q Was there any introduction made at any time?

A No, sir.

Q With respect to Kaplan?

A No, sir.

Q What was the next thing that happened?

A When we got into the room Lang went to the night table drawer, opened the drawer and removed a transparent plastic bag containing white powder and handed it to me.

Q You could see the white powder through the bag?

A That is right.

Q Was this similar to the substance you had received on a prior occasion?

A Yes, sir.

Q As far as appearances?

A Yes, sir.

Q Then what happened?

A When he handed me the package, I felt it and I said it felt more like an ounce than the last package and

Lang stood between Kaplan and myself.

Q When you say Lang stood between Kaplan and yourself, where was Kaplan and Lang with respect to yourself?

A Kaplan was still in that half-propped position on the mattress at the far wall. I was at the wall where the door was closer, closer to where the door was, and Lang was between us.

Q Were they both in your vision?

A Yes, they were.

Q Did you say anything at this time?

A Yes, I did.

Q What did you say?

A I said, either one of you or both of you will have to go down with me to get the money.

Q When you made this statement, at whom were you looking?

A At both Lang and Kaplan, from one to the other.

Q What did you observe with respect to the individuals when you made that statement?

A Lang said nothing except that he turned to Kaplan.

Q Did he look at Kaplan?

A Yes.

Q I am sorry -- did he look at Kaplan?

A Yes, he did.

Q What was the response of Kaplan?

A Kaplan said, "Why do we have to go down to get the money?"

Q What did you say?

A I said, "You guys beat me once and you are not going to do it again."

Q "You guys beat me once and you are not going to do it again"?

A That is right.

Q You had had experience in the drug traffic, is that right?

A That is right, sir.

Q Being an undercover agent?

A Yes.

Q You are familiar with the term "beat me" as it is used in the drug traffic?

A Yes, I am.

Q Please explain to the jury and Court what that term means in the context of that conversation.

MR. SHARGEL: I am going to object to this.

I do not think there is anything elusive about what that means.

THE COURT: I will sustain the objection.

MR. KAPLAN: Your Honor, there is specific -- this is terminology that is used in the narcotics traffic.

THE COURT: It has not been shown that Mr. Kaplan understood that terminology. I will sustain the objection.

Q When you made that comment you were looking at again Kaplan and Lang or at Kaplan?

A At both again, mostly to Kaplan.

Q Was there any reaction on the part of both individuals?

A Lang again turned to Kaplan.

Q What did Kaplan do?

A Kaplan waved him off and said, "All right, go with him."

Q He waved to Lang?

A That is right.

Q What was Lang's response to Kaplan's direction?

A He did his bidding.

Q He moved?

A He began to move.

Q Where were you with respect to Kaplan and Lang?

A I had remained in the same position. Lang started to walk toward the door.

Q What if anything was said after that?

A I looked at Kaplan and I said, "I hope this is good stuff," and Kaplan said to me, "It is five-hit stuff. I hit it five times myself."

Q That is what Kaplan said to you?

A That is right.

Q In the course of your experience in using such terminology, hearing such terminology, explain to the jury please what it means when the term is used "five-hit stuff"?

A The specific term of hit would mean the higher the number the more times you can hit a package, the more purer the narcotic substance is. For example, six-hit or five-hit would be much purer than two-hit or three-hit. What that simply means, the initial package in this case an ounce, could be diluted five times with a non-narcotic substance and from that one ounce you would then get approximately six ounces of still a narcotic substance but of much less purity than the original package.

Q Can you tell us concerning any general ounce of narcotics or heroin what would be after it is hit, as the term is used in this context --

MR. SHARGEL: I object. We are going a little far afield.

THE COURT: No, I will let it stand. He may answer.

A Well, in my position as purchaser, as a whole-sale purchaser of that ounce I would have made approximately six ounces and then sold the ounces individually to another individual who would either hit them again, depending on the quality or just package them up into street terms, meaning nickel and dime bags, five or ten-dollar purchases.

Q What is done with the nickel bag or dime bag?

A It can be either shot into the body or can be snorted but it is at the street level at that point.

Q What was the value of the substance negotiated in this case with respect to the narcotics?

A I negotiated for that ounce for \$1300.

Q And after it is hit into five or six times, what would be the value?

A The value of each of those ounces would then be approximately \$800.

Q Approximately \$4,000 or more, \$4800?

A That is correct, that is prior to it being hit or packaged up into nickel bags again.

Q With respect to the original quality of the heroin that you received from Lang, was that a lesser hit than five-hit?

A Much lesser, yes.

Q How many hits do you know?

A Well, it would not even have been able to be hit, it would have to be bagged the way it was, that is how inferior it was.

Q What statement did you make concerning the inferior quality of heroin previously --

MR. SHARGEL: I will object to that at this point --

THE COURT: Yes, you have to give more detail on that.

Q On January 6th, did you refer specifically to the prior quality?

A Yes, I did.

Q In what terms?

A I told him, "You guys beat me before, you are not going to do it again."

Q You are referring to the prior heroin, is that right?

A That is right.

Q What else happened in the room?

A At that point, after Kaplan made that statement to me, I began to follow Lang out of the bedroom apartment and down the stairs and outside.

Q Where was the heroin at that point, do you recall?

A I do not recall if I had it or if Lang still had it.

Q Where did you proceed?

A We went to the government car.

Q When you say the government car, that is not a car that has a big emblem on it?

A No, sir.

Q This is an undercover car?

A That is right.

Q What happened when you got to the car?

A When I got into the car I took the package and I field-tested it with a special tester we have to determine whether or not there are any narcotic substances present in the powder.

Q Did you determine that?

A Yes, I did.

Q And after you field-tested what did you do?

A I took the package and I locked it into the console. It was a car with bucket seats and I locked it in the car in the console and I told Lang to wait while I went to the trunk of my car, the government vehicle, to get the money, and at this point I went to the trunk of the car.

Q What happened when you went ot the trunk of the car?

A Well, the raising of the hood, the raising of the trunk of the car was a prearranged signal with the surveillance agents to advise them that I had the package and that it was a narcotic and that they could effect an arrest of Lang and myself.

Q When you say effect the arrest of Lang and yourself, can you explain that to the jury. They do not understand you are a narcotic agent and how it was you were arrested.

A Often in an investigation it is necessary to fake the arrest of the undercover agent for several reasons. The investigation might be ongoing, there might be some individual that we have to protect, but for varied reasons the undercover agent is arrested sometimes at the scene of the arrest.

Q Did there come a time when the narcotics was taken into custody by your agents?

A Yes, sir, it was.

MR. KAPLAN: Can we have this marked for identification.

THE COURT: Envelope and contents marked Government Exhibit 2 for identification.

(So marked.)

Q I show you what has been marked Government's Exhibit 2 for identification and ask you to open up the envelope. Can you tell us what is contained in that envelope marked Government Exhibit 2 for identification?

A It is a quantity of white powder contained in two plastic transparent bags.

Q Did you have occasion to identify this previously by your initials being inside the bag?

A Yes, sir. I point them out to you.

MR. SHARGEL: I will stipulate to all this.

MR. KAPLAN: We will offer it in evidence at this time and ask the stipulation be read to the jury.

MR. SHARGEL: No objection.

THE COURT: All right.

THE COURT CLERK: Government's Exhibit 2 marked in evidence.

(So marked.)

MR. KAPLAN: This is a stipulation that was previously marked as Government's Exhibit 1 in evidence. Stipulation means an agreement between the two parties, defense and government.

THE COURT: I might tell the jury this is a

substitute for testimony from the witness on the stand and you can receive it as part of the evidence in the case.

Mr. Kaplan, you may read it.

MR. KAPLAN: "It is hereby stipulated, consented to and agreed by and between the undersigned that:

"1. The exhibit marked as Government's Exhibit 2 in evidence is a white powder containing heroin, a Schedule #1 narcotic drug controlled substance, having a weight of 25.6 grams.

"2. The aforementioned exhibit has remained in the exclusive custody and control of the Bureau of Narcotics & Dangerous Drugs, also known as the Drug Enforcement Administration, from the time of its receipt as heretofore testified until its production in this court."

And it is signed by the two attorneys.

I have no further questions.

THE COURT: All right, you may cross-examine, Mr. Shargel.

MR. SHARGEL: Thank you, Judge.

CROSS-EXAMINATION

BY MR. SHARGEL:

Q Agent Alleva, the facts you just testified to with regard to Mr. Samuel Kaplan occurred on January 6, 1972, was it?

A Yes, sir.

Q I think an earlier reference was made to 1973, but it is 1972, is that right?

A That is right.

Q As you sit there now, there is no question in your mind about that, is there?

A No, sir.

Q As to the date?

A No, sir.

Q Did there come a time after that, Agent Alleva, that you testified in the Grand Jury in this building with reference to this particular case?

A That is right.

Q You took an oath there very much like the oath you took here, is that right?

A That is right.

Q You swore to tell the whole truth to the best of your ability, is that right?

A That is right, sir.

Q Did you swear to that Grand Jury that this all happened on December 3, 1971, Agent Alleva?

A I did not swear to the happening on December 3rd, sir.

Q You took an oath, didn't you?

A That is right, sir.

Q Do you remember being asked this question and giving this answer in the Grand Jury on January 11, 1972? Incidentally, you were asked these questions by an assistant United States attorney, weren't you?

A That is right, sir.

Q Very much like Mr. Kaplan, is that right?

A Not Mr. Kaplan.

Q But very like Mr. Kaplan in the sense he holds the same office?

A That is right, sir.

Q "Q I would like to direct your attention to December 3, 1971. On that date did you visit the residence of Frank Lang to again purchase heroin?

"A Yes."

Were you asked that question and under oath did you give that answer?

A That is right, sir.

Q You have no doubt those questions were with

regard to the same incident that you now tell us were on January 6, 1972?

A I do not understand that.

Q That question was with regard to the incident which you now tell us occurred on January 6, 1972?

A That is right, sir.

Q Is that right?

A That is right.

Q As a matter of fact, you were asked the question and you gave this answer or did you:

"Q On December 3, 1971 what quantity of heroin was turned over to you?

"A Approximately 25 grams, 25.6 grams."

Did you give that answer to that question?

A Yes, sir, I did.

Q That was not true, was it?

A The date was not true, no, sir.

Q With regard to the earlier question and answer that was not true, was it?

A The answer was correct; the date was incorrect.

Q Just a mistake?

A Yes, sir.

Q Incidentally, Agent Alleva, I am not familiar with gram measurements.

MR. SHARGEL: I am asking permission to approach, your Honor.

THE COURT: Yes.

Q This package contains some 25.6 grams or approximately that measure, is that right?

A I do not know the exact weight, no, sir.

Q How many grams in an ounce?

A 28.6.

Q So that amount is somewhat less than an ounce?

A If you are stating as a fact, it is 25 grams and I take your word it is 25 grams, then it is.

Q You heard the stipulation this was measured by a government chemist?

MR. KAPLAN: The word is approximate, the indictment is approximately, too.

MR. SHARGEL: May I have these two photographs marked for identification?

THE COURT: Yes.

MR. SHARGEL: As a matter of fact, may I have all these marked for identification and see what comes into evidence.

THE COURT CLERK: Six photographs marked A through F, Defendant's Exhibits for identification.

(So marked.)

Q Agent Alleva, I show you what has been marked Defendant's Exhibit A for identification. Can you tell this jury and this Court what this is?

A This appears to be either the residence or one very close in resemblance to the residence of Lang.

Q You say one very close. Can you testify with any degree of certainty whether that was the Lang residence?

A Not from a photo I cannot. No, sir.

Q You have been in that residence more than on one occasion?

A Twice; yes, sir.

Q Incidentally, I show you what has been marked Defendant's Exhibit E and F for identification. Can you tell the jury and Court what that represents?

A F appears to be Homecrest Street, the block on which Lang lived.

Q And with regard to E?

A I cannot identify it, no, sir.

Q Agent, can you identify the photograph marked Defendant's Exhibit D for identification, I believe it is?

A No, I cannot.

Q You cannot identify that?

A No, sir, I cannot.

Q Thank you.

MR. SHARGEL: May it please the Court, at this time with regard to Exhibit F, which represents the street in question, may I have that admitted into evidence, or I offer it in evidence.

THE COURT: Any objection?

MR. KAPLAN: May I see it?

MR. SHARGEL: Certainly, you can see all of them.

MR. KAPLAN: May I have a voir dire, your Honor?

THE COURT: All right. A voir dire, ladies and gentlemen, is a sort of preliminary cross-examination just directed to a particular item of evidence.

Go ahead.

VOIR DIRE EXAMINATION

BY MR. KAPLAN:

Q With respect to Defendant's Exhibit F for identification, can you tell us if the street as it appears on that photograph is the way it appeared on January 6, 1972?

MR. SHARGEL: I object to the "way." Is it substantially the way it appears.

THE COURT: Substantially the way.

THE WITNESS: Substantially, the fact it dead-ends at this large brick building at the end of the

street, but as far as anything else goes, I cannot.

Q With respect to the cars being in those positions?

A In those positions, that is impossible to determine if that was the case on January 6th.

MR. KAPLAN: No objection.

THE COURT: Let it be marked.

THE COURT CLERK: Defendant's Exhibit F for identification received in evidence.

(So marked.)

BY MR. SHARGEL:

Q I take it, Agent Alleva, as you look at Defendant's Exhibit A for identification, you cannot tell this Court and jury that is the Lang house that you had been to on two occasions and purchased narcotics in?

A As I testified before, it could either be the Lang house or one extremely close in resemblance to it, since there is on the door what appears to be 1939, but that could have been put on for the picture.

Q Put on for the picture?

A I am saying that is 1939.

THE COURT: Are those row houses where there are several alike?

THE WITNESS: Yes, sir, there could be several.

1
2 THE COURT: I think it is probably sufficiently
3 identified, anyway.

4 MR. SHARGEL: I offer it in evidence.

5 THE COURT: Any objection, Mr. Kaplan?

6 MR. KAPLAN: No objection.

7 THE COURT: Let it be marked.

8 THE COURT CLERK: Defendant's Exhibit A marked
9 in evidence.

10 THE COURT: I think you might let the jury
11 look at these pictures and I will excuse them for
12 lunch as soon as they have looked at all of them.

13 When you are excused, ladies and gentlemen, have
14 in mind what I said. Do not talk about the case
15 amongst yourselves and do not talk about it to any-
16 body else and do not talk at all to any people in
17 the courtroom that happen to see you or you see them
18 during the lunch hour.

19 I think I am clear so we will resume at two
20 o'clock this afternoon.

21 As soon as these pictures have gone around the
22 jury, you are excused for the luncheon hour.

23 You are excused, Mr. Alleva.

24 (At 1:00 o'clock p.m. a recess was taken until
25 2:00 p.m.)

A F T E R N O O N S E S S I O N

THE COURT: All right, Mr. Alleva, will you resume the witness stand, please.

Of course, you remain under oath.

THE WITNESS: Yes, sir.

N I C H O L A S A L L E V A , called as a witness,
having been previously sworn by the Clerk of the Court,
resumed the stand and testified further as follows:

THE COURT: Mr. Shargel, you may proceed.

MR. SHARGEL: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. SHARGEL (Cont'd):

Q Agent Alleva, you testified that you have
been a law enforcement agent with the Drug Enforcement Admini-
stration for some four years; is that right?

A That's correct, sir.

Q And the only question about that was the fact
that the name of the agency had changed, but you continued
in your employment for some four years?

A That's correct, sir.

Q Your primary duty or responsibility was to work
as an undercover agent, is that correct?

A One of the primary functions that I had, yes,
sir.

Q And in doing so you assumed an identity other

than your own?

A That's correct, sir.

Q And you posed as --for want of a better description, a member of the underworld, or narcotic trafficking circles, and try to buy heroin?

A That's correct, sir.

Q And is it fair to say, Agent Alleva, that it is your duty to convince other people that you are not an agent when you are working in an undercover capacity?

MR. KAPLAN: I object to that, your Honor.

THE COURT: Overruled.

THE WITNESS: I would --

THE COURT: It is fair cross-examination. You may answer.

THE WITNESS: May I have the question?

THE COURT: Read the question, please.

(Question read.)

THE WITNESS: Yes, that's correct.

Q In other words, Agent Alleva, it is your job to convince people that you are something you are not?

A That's correct.

Q You have had schooling on this, I take it?

A That's correct, sir.

Q And during that schooling, you are taught about

testifying in Court, aren't you?

A I don't understand what you mean by taught about
testifying.

Q Did you ever attend a school on how to
be an agent?

A Yes, sir, I did.

Q And that was a school run by the agency by whom
you are employed?

A That's correct, sir.

Q And as part of that schooling, did they talk
about testimony in a Courtroom such as this?

A To the point that -- yes, that's true. To
the point that one must conduct himself as a federal agent,
professionally, and to tell the truth at all times, and act
in a professional manner, since we are a professional agency.

Q Are you finished; that's your answer?

A Yes.

Q So the long and the short of it is that you are
taught how to conduct yourself in a Courtroom?

A Conduct myself, period, as a professional federal
agent, yes, sir.

Q Thank you, Agent.

A You're welcome, sir.

THE COURT: All right, let's not quibble about

1
2 it, please.

3 Q You testified, Agent Alleva, that you had been
4 to the Lang home a total of two times.

5 A Yes, sir.

6 Q Are you certain about that?

7 A Yes, sir.

8 Q Isn't it a fact, Agent Alleva, that you were
9 to the Lang home on three occasions?

10 A I was in the lang residence on two occasions;
11 to the home on three occasions, yes, sir.

12 Q Can you tell the Jury the dates you were pre-
13 viously at the Lang home?

14 A I'd have to consult my notes to refresh my re-
15 collection.

16 Q Please do.

17 MR. SHARGEL: May the record reflect that the
18 witness is looking at what has been marked 3500-1
19 for Identification.

20 THE WITNESS: On the 31st of November, 1971 --

21 THE COURT: Not quite, please. It wasn't the
22 31st.

23 THE WITNESS: I'm sorry. I was going to say the
24 -- the report states that on November 30 --

25 Q I don't think, agent, there was a question out-

standing, I think you were reviewing your notes.

THE COURT: I thought you asked when he was there.

Q Does that refresh your recollection as to when you were there?

A Yes, it does.

Q Now, may I have when you were there?

A On November 30th I went to the house but didn't go into the house. And on December 3rd, I went into the house, and then again, naturally, on January 6th.

Q So that's a total of three times that you were in the house?

A No, twice in the house and three times total to the house.

The first time we just went to the door and I summoned Lang out of the house, and that was the November 30th meeting.

Q On November 30, 1971, when you went to the house and you summoned Mr. Lang to come out --

A Yes, sir.

Q -- did he say that he didn't want to come out?

A Yes, sir.

Q And did you insist that he come out of the house?

1
2 A Yes, sir.

3 Q And was that because his mother and sister
4 were at home?

5 A That's correct, sir.

6 Q This was a house that he lived in with his
7 mother, father and sister?

8 A I don't know about his father, sir. I know
9 his mother and his sister.

10 Q Did you see his sister on that occasion?

11 A I may have, that's why I made that statement,
12 I may have seen her. I don't recall.

13 Q But you didn't want to transact any business in
14 front of his mother and his sister?

15 A I didn't want to talk to him in front of his
16 mother and his sister, that's correct.

17 Q Did there come a time when Mr. Lang came out of
18 the house?

19 A Yes, sir.

20 Q And did there come a time when Mr. Lang got
21 into an official Government vehicle?

22 A Yes, sir, he did.

23 Q An undercover car?

24 A That's correct, sir.

25 Q Was there another agent present in that car?

- 1
2 A Yes, sir, there was.
3 Q Can you tell the Jury the agent's name?
4 A Yes, sir, I can.
5 Robert Dinius, D-i-n-i-u-s.
6 Q Did Mr. Dinius remain in the car while you
7 talked about the sale and purchase of heroin?
8 A While we were in the car, yes, sir.
9 Q Was Agent Dinius introduced to Mr. Lang?
10 A I don't recall. I may have said, "This is a
11 friend."
12 Q And you went on to discuss the purchase of
13 heroin?
14 A That's correct.
15 Q And I take it then, Agent Alleva, that if
16 Agent Dinius were called to the witness stand he could
17 corroborate what happened in that automobile?
18 A That's absolutely correct.
19 Q There is no question in your mind about that, as
20 you sit there now?
21 A That's correct.
22 Q Incidentally, some two months later, a little
23 over a month later on January 6, 1972, when you went into
24 the Lang residence and you saw Mr. Sam Kaplan, there was no
25 other agent with you; is that right?

1 A That's correct, sir.

2 Q And there is no other agent who can take that
3 witness stand and corroborate what you are telling us now?

4 A No, sir.

5 Q You talked about a time that you purchased an
6 inferior quality of heroin from Mr. Lang; is that right?

7 A Yes.

8 Q May I have this (referring to 3500-1)?

9 A Certainly.

10 Q At the time of that purchase, Sam Kaplan wasn't
11 present, was he?

12 A Which purchase, sir?

13 Q The earlier purchase of the inferior quality,
14 was Sam Kaplan present during that purchase?

15 A He was not in his car, no, sir.

16 Q Was he in the house?

17 A I have no idea --

18 Q Did you see Sam Kaplan on November 30th?

19 A I didn't see him.

20 Q Did you ever see or were you introduced to
21 Sam Kaplan prior to January 6th?

22 A No, sir, I never saw him.

23 Q Did you ever talk to him?

24 I take it that is included in that answer?
25

2 A I never spoke to him.

3 Q The first time you ever spoke to Sam Kaplan
4 was on January 6, 1972?

5 A That's correct, sir.

6 Q Sam Kaplan never gave you any heroin before
7 January 6, 1972, is that right?

8 A No, sir, he never gave it to me, no, sir.

9 Q You purchased heroin -- now I'm talking about the
10 inferior quality, was that on November 30th?

11 A I believe the date was November 29th, sir.

12 Q November 29th?

13 A Yes, sir.

14 Q And how much did you pay for that heroin?

15 A \$1,300, official Government funds.

16 Q You didn't give it to Sam Kaplan, did you?

17 A I didn't give it to him, no, sir.

18 Q Now, when we talk about official Government
19 funds, where did you obtain these funds from?

20 A From the cashier.

21 Q Which cashier?

22 A The cashier in the Drug Enforcement -- at
23 that time the Bureau of Narcotics & Dangerous Drugs cashier.

24 Q Was that a common practice, to use Government
25 monies to effect the illicit purchase of heroin in an undercover

capacity?

A It was and still is, sir.

Q And that's an effective means of trapping sellers of narcotics, isn't it?

Do you want me to clarify that?

A The word "trapping," yes, sir.

Q I will withdraw the word "trapping," and see if I can clarify that.

You obtain the monies from the cashier -- do you not?

A That's right.

Q And you write down the serial numbers of the monies?

A That's correct, sir.

Q And you write down the denominations of the bills?

A That's correct, sir.

Q And you preserve this record of both the denominations and the serial numbers?

A That's correct, sir.

MR. SHARGEL: May I have this marked, please.

THE CLERK: One-page document marked Defendant's G for Identification.

(So marked.)

xxx

11 Alleva - cross

54

BY MR. SHARGEL:

Q Agent Alleva, I show you what has been marked as Defendant's Exhibit G for Identification.

I ask you if you can identify that to this Jury and Court.

A Yes. This is the money list of the serial numbers for the purchase of Exhibit 1.

Q Would you tell this Jury what Exhibit 1 is?

A That was the original purchase of narcotics from Frank Lang.

Q It is not this Exhibit 1, is it?

A No, that is Exhibit -- I don't know what the Court is referring to it as. That is Exhibit 2 in the case.

Q In this case?

A In this particular case. Not Court Exhibit 2. That is mine. When I denote an exhibit in our case --

Q You put your own exhibit numbers on it?

A That's right, sir.

Q So when you say it pertains to Exhibit 1, it pertains to the quantity of heroin that was purchased from Frank Lang on that earlier occasion?

A That's correct, sir.

Q How much heroin was that, by the way?

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3 A I don't recall, sir. It was approximately one
4 ounce, but I don't know the exact weight. I'd have to
5 refer to the chemist's analysis.

6 Q It was approximately an ounce?

7 A It was supposed to be approximately an ounce,
8 yes, sir.

9 Q You intended or your negotiations were to
10 buy one ounce of heroin?

11 A That's correct, sir.

12 Q You don't receive any particular training in
13 weights and measures, do you?

14 A I don't understand.

15 Q Here's what I mean by that, if you picked this
16 up, you can't tell us the exact weight of it, can you?

17 A No, sir.

18 Q This was approximately an ounce, approximately?

19 A Approximatdy an ounce, yes, sir.

20 Q The earlier purchase was approximately an ounce?

21 A Yes, sir.

22 Q You stated on your direct testimony, and I
23 believe during cross, that the earlier package of heroin was
24 of an inferior quality; isn't that right?

25 A And quantity, yes, sir.

Q And quantity?

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2 A There was a shortage of a few grams. I don't
3 recall the exact weight.

4 Q When you were in that room on January 6th,
5 you could feel it and say, "This feels more like it"?
6

7 A It's a case of dramatics, of which I'm sure
8 you are aware.

9 Q You were being dramatic?

10 A Yes, sir.

11 Q You are not being dramatic now, are you?

12 A Absolutely not, sir.

13 Q These monies were turned over to Mr. Lang,
14 weren't they?

15 A Yes, sir, I turned them over to him.

16 Q And you retained a copy of this list, or this
17 list in your file; is that correct?

18 A That's correct, sir.

19 Q You gave Mr. Lang \$1,300. Where did it go?

20 A I don't know, sir.

21 Q He just sold you heroin, didn't he?

22 A Yes, sir.

23 Q What you believed to be heroin?

24 A That's correct, sir.

25 Q He violated the law, didn't he?

A That's correct, sir.

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2 Q Is it fair to say, Agent Alleva, that if you
3 placed him under arrest at that time, the \$1,300 in marked
4 money would have been in his pocket, as you had just given
5 it to him; is that right?

6 A That's correct, sir.

7 Q You would have had a great deal of proof in the
8 fact that here were the monies you just give him; isn't
9 that right?

10 A I don't understand what you mean by a great
11 deal of proof.

12 Q Mr. Lang would have been in possession of recorded
13 and marked Government money, would he not?

14 A That's correct, sir.

15 Q On January 6, 1972, the date we are talking
16 about here, you had marked, recorded Government monies in your
17 possession -- when I say in your possession, I mean in the
18 trunk of the car?

19 A That's correct, sir.

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21 (Continued on next page.)
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SF fols.

CROSS-EXAMINATION

BY MR. SHARGEL: (Cont'd.)

Q And had the monies been given to the real seller you could have recovered it, couldn't you have?

A Possibly, yes, sir.

Q That could have been introduced here in the courtroom, couldn't it?

A Yes, sir, possibly.

Q Possibly? You have some doubt about that?

A Yes, I do.

Q Do you? You never gave those monies to Mr. Lang, did you?

A Mr. Lang? No, I never did, sir.

Q You certainly never found any of those monies on Mr. Kaplan, did you?

A They weren't given to him.

Q And the purpose of the monies was to catch the seller, wasn't it?

A That's not correct, no, sir.

Q That's not correct?

A No, sir.

Q Is it to demonstrate that you have the money there?

A It's to pay for a product that you just bought.

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Q And you never paid for that product?

A That's correct, sir.

Q Does the Federal Government, to your knowledge, ever dust any materials for fingerprints?

A Certain materials, yes, sir.

Q Does the Federal Government or any law enforcement agency, to your knowledge, examine an item for fingerprints to determine whether prints are present on contraband?

MR. KAPLAN: I'm going to object on a certain ground, your Honor. I would ask that he limit the scope of his question. The Federal Government is a vast organization.

THE COURT: The BNDD.

THE WITNESS: I don't --

Q Did you ever employ the science of fingerprint comparison?

A Yes, sir, we have.

Q You do? Was this ever dusted or tested for fingerprints?

A Absolutely not, sir.

Q Absolutely not?

A That's right.

Q So I take it you never found the fingerprints of Samuel Kaplan on this package?

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A No, sir.

Q You had an appointment, Agent Alleva, with Mr. Lang on January 6, 1972?

A That's correct, sir.

Q And you were working, I take it, with a group of agents?

A Yes, sir, I was.

Q Did you meet with this group of agents on the morning of January 6, 1972?

A As a group or individually?

Q Did you discuss this with other members of your group?

A Yes, I did.

Q And to place this in the proper context, you went to the Lang residence or arrived at the Lang residence at 2:00 p.m.?

A Approximately 2:00, yes.

Q And earlier that morning you had discussions with agents?

A That's correct, sir.

Q And as a result of those discussions -- incidentally, were you the case agent on this case?

A Yes, I was, sir.

Q Will you tell this jury what the case agent

1
2 is, or what that means?

3 A Case agent is responsible for the checks made
4 as to the alleged dealers background, criminal background,
5 criminal checks, verifications as to the people involved and
6 coordinating of the paper work, the actual writing of the
7 reports and he -- in this case, I happened to have functioned
8 in both capacities, as the case agent and the undercover
9 agent.

10 Normally, if a case agent is different than
11 the undercover agent, the case agent is usually the one that
12 instructs the undercover agent as to what to do. However,
13 as I said, in this case I was both the case agent and the
14 undercover agent.

15 Q Did you give any instruction in this case to
16 other agents?

17 A No, I didn't.

18 Q Did you know, sir, that on January 6, 1972,
19 there were going to be other agents surveilling this house
20 on Homecrest Avenue?

21 A That's correct, sir.

22 MR. SHARGEL: May I offer this in evidence
23 at this time, your Honor?

24 MR. KAPLAN: I object on the grounds of rele-
25 vancy, your Honor.

THE COURT: I don't see any point in the numbers on the prior sale.

MR. KAPLAN: It's already been identified by the witness, your Honor. I will object as to that having no materiality on any issue in this case.

MR. SHARGEL: Most respectfully, I would submit to your Honor that this reflects the way the agents had operated during the course of this investigation. It's the investigation that Agent Alleva testified to here in court. He testified about this earlier purchase.

MR. KAPLAN: I object to any comments being made.

THE COURT: Let it be marked.

THE CLERK: Defendant's G marked in evidence.

(So marked)

BY MR. SHARGEL:

Q Agent Alleva, how many other agents, if you know, were surveilling that house on January 6, 1972?

A I don't recall the exact number. I would say it was approximately eight.

Q Do you know how many cars they went to that area in?

A No, sir, I don't.

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Q They were there to make an arrest, were they not?

A Yes, sir.

Q As a matter of fact, you had a signal pre-arranged as to when to make the arrest?

A That's correct, sir.

Q Did you not?

A Yes, sir.

Q And that signal was when you opened the trunk of your car?

A That's correct.

Q That's when the agents who were surveilling were to come in and arrest, in this case you and whoever you purchased from?

A That's correct.

Q Did you tell any of the agents the address that you were going to?

A Yes, I did.

Q So they knew that you were in 1939 Homecrest Avenue?

A That's correct, sir.

Q It was their job to watch the house, wasn't it?

A Yes, sir.

Q It was their job to watch who went in?

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A Yes, sir.

Q And who went out?

A Yes, sir.

Q Did they watch you go in, to your knowledge, were they already there?

A Yes, sir.

Q You were let in by Mr. Lang's mother, were you not?

A Yes, sir.

Q Did you knock on the door or ring the bell?

A I don't recall.

Q You had seen his mother before from the other time you had been in the house?

A Yes, sir.

Q You saw Mr. Lang coming down the steps?

A That's correct, sir.

Q And he summoned you into the bedroom?

A He summoned me to go up with him, yes, sir.

Q Did you exchange any pleasantries with Mr. Lang's mother, do you recall that?

A I don't recall.

Q Do you recall seeing Mr. Lang's sister on that occasion?

A No, I don't.

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2 Q You have no recollection of that?
3 A No, sir. I recall not seeing her.
4 Q You didn't see her?
5 A That's correct, sir.
6 Q And you went upstairs to Mr. Lang's bedroom?
7 A That's correct.
8 Q Tell me, Agent, were there other bedrooms on
9 that floor?
10 A I don't know what the other rooms were, no,
11 sir.
12 Q Was there a hallway?
13 A Yes, sir, there was a hallway.
14 Q Were there other rooms off the hallway?
15 A There were other rooms, yes, sir.
16 Q And you saw no other people?
17 A Absolutely not, sir.
18 Q Did you see a young man and a young woman in
19 the house at that time?
20 A No, I didn't, sir.
21 Q You're absolutely sure of that?
22 A Positive, sir.
23 Q What time did the surveillance agents get to
24 the vicinity, if you know?
25 A I don't know.

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Q But they were watching the house to see who went in and who went out?

A That's correct, sir.

Q Were they watching the back yard?

A I have no idea, sir. I don't know where they were.

Q After you were arrested, the agents broke into a house to look for people, didn't they?

A That's incorrect, sir. They didn't break into a house.

Q After you were arrested, Federal Agents went into a house to look for people, didn't they?

A That's correct, sir.

Q They went into the house they were watching, didn't they?

A No, that's not correct, sir.

Q They went into the wrong house, didn't they, Agent Alleva?

A That's correct, sir.

Q How many agents went into the wrong house, if you know?

A I don't. I don't know exactly. About two or three.

Q But you told me, Agent Alleva, that they weren't

1
2 watching the wrong house?

3 A That's correct, sir.

4 MR. KAPLAN: I object at this point, your
5 Honor. We haven't ascertained what agents we're
6 talking with. Are we talking about eight agents,
7 two agents or three agents? It's unclear at this
8 point.

9 THE COURT: The last answer was two or three
10 agents.

11 Q Did you say there were approximately eight
12 agents watching in the vicinity, approximately?

13 A That's correct.

14 Q How many agents, sir, broke into the wrong
15 house, if you know.

16 THE WITNESS: Your Honor, the term "break
17 in" again --

18 Q I'll withdraw the term "break in" and we'll
19 determine that at a later time. How many agents went into
20 the wrong house?

21 A From my -- from where I was, I would say two
22 or three is what I saw going into that house.

23 Q Do you know, sir, if any agents went to the
24 back yard of the wrong house?

25 A No, I don't.

Q Do you, sir, know whether the Bureau of Narcotics and Dangerous Drugs and/or the Drug Enforcement Administration has ever been sued by citizens for going into the wrong house?

MR. KAPLAN: I object to this, your Honor. This is irrelevant.

THE COURT: Objection sustained.

Q You went into the room of Frank Lang?

A Sorry?

Q Did you go into the room of Frank Lang?

A Did I go in?

Q On January 6, 1972?

A Yes, sir.

Q Bringing you back to that point.

A Yes, I did.

Q You told us about psychedelic lights, posters?

A That's correct, sir.

Q Did you see a telephone?

A No, I don't recall, sir.

Q You have no recollection of seeing a telephone?

A No, no, sir.

Q And that's when you saw Samuel Kaplan for the first time?

A And that's when I saw Samuel Kaplan for the

1
2 first time?

3 Q Yes.

4 A That's correct, sir.

5 Q Samuel Kaplan was sprawled on the bed, to use
6 your words, or words of that effect?

7 A That was my words. He was half laying, half
8 sitting in a propped-up position.

9 Q And you weren't introduced to him?

10 A Sorry?

11 Q You weren't introduced to him?

12 A No, I was not.

13 Q You just proceeded to say, "You guys beat me
14 the time before"?

15 A That's correct, sir.

16 Q I take it, sir, that Frank Lang never in the
17 past had given you heroin in that house?

18 A That's correct, he never gave me heroin in that
19 house.

20 Q As a matter of fact, sir, that Frank Lang gave
21 you the heroin in the car?

22 A In what car?

23 Q In your car on January 6th.

24 A That's not correct, sir.

25 Q Did you ever testify that he gave you the

1
2 heroin in the house -- I'm sorry withdraw that, the heroin
3 in the car?

4 A I testified he may have handed me the package
5 the second time, because I didn't know who carried the
6 package down from the apartment.

7 Q So it may have been Lang and it may have been
8 you?

9 A Who carried the package out of the room that's
10 correct, sir.

11 Q Samuel Kaplan, you say, talked about "five
12 hit stuff"?

13 A That's correct, sir.

14 Q You knew what that meant, didn't you?

15 A Yes, sir, I did.

16 Q You didn't hear it for the first time from
17 Samuel Kaplan, did you?

18 A No, sir, I didn't.

19 Q As a matter of fact, you had heard it from
20 Frank Lang before, hadn't you?

21 A That's correct, sir.

22 Q When he talked about the earlier package?

23 A That's correct, sir.

24 Q And he used the expression "five hit stuff",
25 didn't he?

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A That's correct, sir.

Q And now you're telling us that Samuel Kaplan used the precise same phrase?

A Yes, sir, that's correct.

Q As I said, Agent, you're quite familiar with that language, aren't you?

A Yes, sir.

Q Did you ever send any agents back into 1939 Homecrest Avenue to search for drugs?

A Absolutely not, sir.

Q Did you ever send any agents back into 1939 Homecrest Avenue to search for other people?

A At what point, sir?

Q After you were arrested?

A No, sir.

Q You said you negotiated -- on your direct examination you said you negotiated the purchase of this heroin for \$1,300, is that right?

A That's correct, sir.

Q You didn't negotiate that with Samuel Kaplan, did you?

A No, sir.

Q It wasn't Samuel Kaplan who set any price, was it?

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A I have no idea.

Q Did Samuel Kaplan tell you a price?

A He didn't tell me a price, no, sir.

Q Do you know if Samuel Kaplan had a car in the vicinity of 1939 Homecrest Avenue on that day?

A No, I don't, sir.

GR fls.

(Continued on next page.)

2 PM

Alleva - cross

Q Do you know whether Mr. Lang had a car?

A I know he used a car, yes, sir.

Q Do you know whether that car was seized by your Bureau?

A Yes, it was, sir.

Q Do you know whether Mr. Kaplan's car was seized by your Bureau?

A No, sir, it was not.

Q It was not?

A No, sir.

Q Can you, sir, tell us the reason for seizing Mr. Lang's car?

A Because of the purchase of Exhibit 1.

Q Do you know, sir, that in order to seize a car, it must be reasonable to believe that it transported or aided in the transportation of heroin?

A Facilitated or the negotiations thereof, yes, sir.

Q Or the negotiations?

A Yes, sir.

Q And as a result of that, did you know that you had the authority to seize his car?

A Seize whose car?

Q Lang's.

2 Alleva - cross

A Absolutely, sir. That's why we seized it.

Q You can seize any car that transports, facilitates the transportation or is involved in the negotiation of heroin; is that right?

A Providing those three criteria are within our either surveillance or observation or direct purchase from within the car, yes, sir. It's absolutely correct.

Q Isn't it a fact, sir, that Sam Kaplan was arrested as he was walking to his car?

A After the arrest of Lang and myself, that's correct, sir.

Q And Sam Kaplan's car was never seized?

A Absolutely.

Q By your agency?

A Absolutely not, sir.

Q You stated Agent Alleva, that you were arrested on that day?

A That's correct, sir.

Q That was in your undercover capacity; was it not?

A Yes, sir.

Q Were handcuffs placed on you?

A Yes, sir, they were.

Q That was because at times you continued your

3 Alleva - cross

investigation to get your evidence against a person?

A That's one of the possibilities, yes, sir.

Q You didn't continue your undercover capacity in this case; did you?

A That is correct, sir, I did not continue.

Q You broke your cover?

A Subsequent to the arrest, yes, sir.

Q And there is no agent, Agent Alleva, that can take that stand and corroborate what happened in that room on January 6, 1972?

A No, sir.

Q Is that right?

A That's correct, sir.

MR. SHARGEL: I have no further questions.

THE COURT: Any redirect?

MR. KAPLAN: Redirect, your Honor.

REDIRECT EXAMINATION

BY MR. KAPLAN:

Q Agent Alleva, do you recall being asked by Mr. Shargel certain questions about your appearance in the Grand Jury?

A Yes, sir, I do.

Q Do you re call how many appearances you made in the Grand Jury in connection with this case?

A Two.

Q Do you recall when the first Grand Jury appearance was?

A I believe it was shortly after the 6th of January, within five or six days.

Q Well, I show you Government's Exhibit 2 for identification and ask you if that refreshes your recollection as to the date?

A It was exactly five days, January 11, 1972.

Q Do you recall who the assistant United States attorney was that presented that Grand Jury testimony?

A Yes, sir; Harold J. Friedman.

Q With respect to the second appearance in the Grand Jury, do you recall when that was?

A No, I don't recall the exact date, sir.

Q I show you what has been marked as Government's Exhibit 3 for identification and ask you if that refreshes your recollection.

A Yes, sir, it does.

Q When was your second Grand Jury appearance?

A July 11, 1972.

Q Do you recall who the assistant U.S. attorney was that presented that case to the Grand Jury?

A Yes, sir. It was yourself, Kenneth J. Kaplan.

5 Alleva - redirect

Q Can you tell us, with respect to Grand Jury appearances, how the testimony is elicited as opposed to the trial, as in the case we have here in court?

A In the Grand Jury, the U.S. Attorney supplies the --

MR. SHARGEL: I object to this, your Honor.

THE COURT: Overruled.

A (Cont'd) In the Grand Jury, the U.S. Attorney supplies the questions containing the date, time, etc.; and it's mostly a yes or no answer from the witness.

Q And the Grand Jury presentation is a very short one; is it not?

A That's correct.

Q Some five or six pages?

A Yes, sir.

Q With respect to your first Grand Jury appearance on January 11, 1972, do you recall if you ever made any statement as to the date in question?

A I recall not making the exact -- statement as to the exact date.

Q Do you have any recollection of any specific date being mentioned?

A My recollection was refreshed on several occasions subsequent to that -- to the second Grand Jury.

6 Alleva - redirect

Q In any event, in your Grand Jury appearance you have no specific recollection of hearing that date; is that correct?

A That's correct, sir.

Q You subsequently learned that that was the incorrect date supplied by Mr. Friedman?

A Yes.

Q You didn't state that date?

A No, sir.

Q Subsequently when you reappeared in the Grand Jury upon my questioning were you again supplied with a date?

A I'd have to refresh my recollection.

Q Take a look.

A On that date the -- on this particular Grand Jury appearance, the date of January 6, 1972 was given.

Q Do you recall making out a report subsequent -- report subsequent to this event?

A To the January 6th event? Yes, sir, I do.

Q I show you what has been marked as Government's Exhibit 1 for identification and ask you if it refreshes your recollection as to the date when you made out this report?

THE COURT: Is it in this folder, Mr. Kaplan?

THE WITNESS: Yes, it is.

MR. KAPLAN: Yes, it is, your Honor.

7 Alleva - redirect

THE WITNESS: It's just not in order.

On January 7, 1972, I made out the report.

Q That was the day after the incident; is that correct?

A That's correct, sir.

Q And in the report is the correct date supplied?

A Yes, sir, absolutely.

Q January 6th?

A That's correct.

Q And you made out this report; is that correct?

A That's correct, sir.

Q So it was Mr. Friedman in the Grand Jury who obviously made a mistake?

A That's correct, sir.

Q In your career as an undercover agent, how many times would you say you've heard the expression "five-hit stuff or three-hit stuff or six-hit stuff" used during the course of conversation?

A Countless number of times, sir.

Q Is this an expression that's used in the narcotics traffic?

A Yes, it is, sir.

MR. KAPLAN: I have no further questions.

Thank you.

8

Alleva - recross

THE COURT: Any recross?

MR. SHARGEL: Just a question or two.

RE CROSS EXAMINATION

BY MR. SHARGEL:

Q When I read the questions and answers to you from the Grand Jury transcript, that reflected that Mr. Friedman was putting in the December 3rd date?

A That's correct, sir.

Q And you were answering "Yes" because he referred to the December 3rd?

A That's correct.

Q And you didn't catch the mistake in dates?

A That's a possibility, sir.

Q So it was a mistake on Mr. Friedman's part?

A On Mr. Friedman's part and my own for not catching it, that's correct, sir.

MR. SHARGEL: I have no further questions.

THE COURT: All right. You can step down.

Thank you.

THE WITNESS: Thank you.

(Continued on next page.)

1 Burstein - direct

2 THE COURT: Your next witness.

3 MR. KAPLAN: The Government calls Agent Burstein,
4 your Honor.

5 THE COURT: All right.

6 L A R R Y B U R S T E I N , called as a witness,
7 having been first duly sworn by the Clerk of the
8 Court, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. KAPLAN:

11 Q What is the nature of your employment?

12 A I'm a special agent for the Drug Enforcement
13 Administration.

14 Q For how long a period of time have you been so
15 employed?

16 A For about five and a half years.

17 Q That was also known as the Bureau of Narcotics
18 & Dangerous Drugs, is that right?

19 A Yes, it was.

20 Q Were you so employed on January 6, 1972?

21 A Yes, I was.

22 Q In what specific capacity?

23 A On that particular date, I was assigned to
24 conduct surveillance at the residence of Francis Lang.

25 Q Explain to the Jury if you will, what it means

Ruggerio-direct

testified as follows:

THE CLERK: Full name.

THE WITNESS: Patricia Ruggerio,

R-u-g-g-e-r-i-o.

DIRECT EXAMINATION

BY MR. SHARGEL:

Q Mrs. Ruggerio, would you speak up in a loud voice so the entire jury can hear you.

A Yes.

Q Are you married, ma'am?

A Yes, I am.

Q How long have you been married?

A A year and a half.

Q Are you employed?

A Yes, I am.

Q Would you tell the jury your employment.

A I work for a law firm.

Q What do you do for a law firm?

A I'm a secretary.

Q Mrs. Ruggerio, what is your maiden name?

A Lang.

Q Are you the sister of Frank Lang?

A Yes, I am.

Q What was your employment on January 6, 1972?

Ruggerio-direct

- 1
- 2 A I worked for the same law firm I'm at now.
- 3 Q Were you at work that day on January 6th,
- 4 1972?
- 5 A No, I was home sick.
- 6 Q Do you know Sam Kaplan?
- 7 A Yes, I do.
- 8 Q You see the gentleman sitting right over
- 9 there (indicating)?
- 10 A Yes, he is.
- 11 Q How long have you known Sam Kaplan?
- 12 A At least six, seven years.
- 13 Q Incidentally, when was the last time, other
- 14 than this morning, that you saw Sam Kaplan?
- 15 A Over a year ago.
- 16 Q You no longer live on Homecrest Avenue, do
- 17 you?
- 18 A No.
- 19 Q On January 6, 1972, you were single and lived
- 20 on Homecrest Avenue?
- 21 A Yes.
- 22 Q Incidentally, do you still live in New York
- 23 State?
- 24 A No, I do not.
- 25 Q How would you describe the relationship

Ruggerio-direct

between Mr. Sam Kaplan and your family?

A Well, Sam Kaplan was a friend of my father's and he was friendly with my father, myself, my mother, and he was like a big brother to my brother. He watched out for him. If there was something he could do for him, you know, my brother would call Sammy.

Q Do you know if Mr. Kaplan ever got your brother a job?

A Yes, he did.

Q Tell the jury approximately what type job that was.

A It was floor carpeting.

Q Had your brother worked as a floor carpenter?

A Yes, he did.

Q Installations and that type thing?

A Yes.

Q Do you remember the events of January 6, 1972?

A Yes, I do.

Q You told us you were home that day?

A Yes.

Q At that time?

A Yes.

Q Do you remember Sam Kaplan coming to your house?

Ruggerio-direct

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A Yes, I do.

Q Do you remember what time that was?

A It was lunchtime, 12:30.

Q You say you were home all that day?

A Yes.

Q Did you have any conversation with Sam Kaplan
that day?

A Yes. he came into the kitchen and had coffee
with my mother and brother and I. He told my brother he
could get him a job, you know, in carpeting and he was
telling--like he always told my brother--

MR. KAPLAN: I would object to conversations
at this point.

MR. SHARGEL: Conversations of the defendant,
this is his activities that day.

THE COURT: I don't know how that becomes
admissible.

MR. SHARGEL: Might we have a side bar?

THE COURT: All right.

(The following occurred at side bar)

MR. SHARGEL: I hate to cite precedent about
this trial, came out at the last trial. We're
retrying the event of that day--

THE COURT: How can she testify to what he

Ruggerio-direct

said?

MR. SHARGEL: She testified at the last trial--we're talking about the last trial--testified at the last trial to the conversation that she had with him.

THE COURT: What makes it admissible?

MR. SHARGEL: I say it's made admissible as part of the res gestae. It's not self-serving. It's not admitted as to the truth-- Let me say that, not admitted for the truth, just a matter of what was said, his statement. He's supposed to have been involved in an illicit transaction that day. This witness is able to supply what happened on that day.

THE COURT: She can say what happened. She can't say what he told her. Admissions can be used against him, but he can't put in his own testimony through somebody else.

MR. SHARGEL: I'm not suggesting that is coming in as admission. It's coming as the events of that day.

THE COURT: She can testify to events, but not the conversations.

MR. SHARGEL: There is a very essential

Ruggerio-direct

element of this conversation which is directly relevant to what Sam Kaplan was doing in that room.

THE COURT: She can't get it in in this way.

MR. SHARGEL: Very well.

(The following occurred in open court.)

Q After this conversation that you had at the kitchen table with Mr. Kaplan, Mr. Samuel Kaplan and your mother, do you recollect when other people came into the house?

A Yes.

Q Could you describe these other people for the jury?

A Oh, a man and a woman and the woman was around my age--I'm twenty-four, but, you know--and the man was about three years older than I am.

Q Did you have any conversation with this couple?

A No, I didn't.

Q Have you ever seen the couple before?

A No.

Q Did you see where the couple went after they came into the house?

A Yes.

Q Could you tell the jury where the couple went?

A Yes, they went with my brother upstairs to

Ruggerio-direct

his room.

Q Is there any question in your mind as you sit there now about that?

A No.

Q Do you recollect when you left the kitchen table?

A Yes.

Q Did you see Sam Kaplan leave the kitchen table?

A Yes.

Q Can you tell us where you went and where he went?

A I went upstairs to my room and Sammy went to my brother's room.

Q Incidentally, can you describe the bedroom level of the house? Is it a one-family house?

A Yes, it is.

Q Would you describe to the jury the bedroom level of the house?

A I don't understand.

Q How many bedrooms were on the second floor?

A Three.

Q Was your bedroom on the second floor?

A Yes.

Q Where was it in relation to your brother's

Ruggerio-direct

1
2 bedroom?

3 A My bedroom is to the left of the stairs as
4 you go up the stairs. My brother is to the right.

5 Q How many telephones do you have in your house?

6 A Three.

7 Q Tell us where the telephones are, please.

8 A There's one in the kitchen, one in my bedroom,
9 and one in my brother's bedroom.

10 Q So there came a time that you went to your own
11 bedroom?

12 A Yes.

13 Q Did you see the couple again?

14 A Yes.

15 Q Can you tell the jury when?

16 A My brother came to my room, asked me if they
17 could sit in my room while Sammy made the phone call for my
18 brother.

19 Q Did your brother tell you what the phone call
20 was for?

21 A Yes.

22 MR. KAPLAN: I'm going to object again, same
23 ground, your Honor.

24 MR. SHARGEL: I submit it goes to state of
25 mind, your Honor.

Ruggerio-direct

THE COURT: Come to the side bar.

(The following occurred at side bar.)

THE COURT: I think the Court of Appeals said conversations bearing on state of mind are not admissible.

MR. SHARGEL: It was the witness's state of mind in U.S. v. Kaplan. Let's put that aside for the moment. I have no right of cross-examination of Lang, obviously. The January 5th phone call comes in on an exception to the hearsay rule. I have no right of cross-examination. My position and my offer of proof, it's not lengthy, and not going to be more than one question, the one question before the witness is that Lang told her that he's making a phone call, that Kaplan is making a phone call to get him a job. Now, this is not a self-serving statement. It's not a statement of the defendant; it's a statement of a co-conspirator and I think we should have some leeway in presenting the defense of this case where we have a situation--

THE COURT: Did she testify to this last time?

MR. SHARGEL: Yes.

MR. KAPLAN: It was a little different last

Ruggerio-direct

time, your Honor. The defendant testified, and I don't know if the defendant is going to testify in this case. I believe that he may not. As such, this is a self-serving declaration by the defense without the Government's opportunity for cross-examination.

THE COURT: I think as long as we have a dead man whose conversations have been described in part, I ought to let this in.

(The following occurred in open court.)

Q Getting back to where we were, your brother asked you to have a couple wait in your room while Sam Kaplan made a phone call in his room?

A Yes.

Q Did your brother tell you what that phone call was?

A Yes.

Q Would you tell the jury what the phone call was about?

A A phone call to get my brother a job.

Q Do you know who the phone call was made to?

A No, I don't.

Q Did you have any conversation with the couple while they were in your room?

Ruggerio-direct

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A Just when they first walked in.

Q Was it anything more than small talk?

A No.

Q Do you recollect when you saw someone else
enter the house?

A Yes.

Q Can you describe that individual?

A No, I only saw him for a few seconds.

Q Did he pass your bedroom?

A He passed the hallway. I saw him in the
hallway.

Q Can you identify that individual as Agent
Allewa?

A No, I cannot.

Q Did the individual go into your brother's bed-
room?

A Yes, he did.

Q Do you recollect, Mrs. Ruggerio, to your
knowledge, that your brother and that individual left the
house?

A Yes.

Q Did you see them leave the house?

A No.

Q Do you recollect after they left the house

Ruggerio-direct

that the couple said anything in your presence?

MR. KAPLAN: I'm going to object to the leading and object to conversations as hearsay, your Honor.

THE COURT: I'll overrule the objection. Let it come in.

A Could you repeat the question?

Q Do you recollect after your brother left with that individual that the couple said anything to you?

A No.

Q Do you recollect that the couple left?

A Yes.

Q Did they say anything before they left?

A No, they did not.

Q Do you know in which manner they left the house?

A Yes.

Q Can you tell the jury how they left the house?

A Through the kitchen door, which is the back door.

Q Going out through the back door?

A Yes.

Q Any question in your mind a man and woman were in that house?

Ruggerio-direct

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A No.

Q Did you subsequently see your brother under arrest?

A Yes, I did.

Q Was he under arrest with the individual that he walked out with?

A I don't know.

Q Do you recollect when your car was taken from you?

A Yes.

Q Who was that car registered to?

A My father.

Q When did your brother die?

A May 16th, 1973.

Q Tell this jury how your brother died.

A Overdose of methadone.

Q When were you married?

A September 8th-- Excuse me. He died 1972.
I was married 1973, September 8th.

Q Your brother was having a problem with drugs?

A Yes.

Q You got married how many months after his death?

A (No response.)

Ruggerio-direct

Q Could we have the date?

A September 8th, 1973.

Q Is when you got married?

A Got married.

Q Did you invite Sam Kaplan and his wife to
your wedding?

A Yes, I did.

Q Incidentally, your mother was in the house that
day?

A Yes, she was.

Q Would you describe your mother's mental state
at this time?

A She's not a well woman. Her memory is very
bad. She had a nervous breakdown ten years ago and she never
really recovered.

MR. SHARGEL: I have no further questions.

THE COURT: You may cross-examine, Mr. Kaplan.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mrs. Ruggerio, I'm Kenneth Kaplan, the
Assistant United States Attorney.

Mrs. Ruggerio, would you describe to us,
please, your brother, his appearance, as he looked around
this time, January 1972?

Ruggerio-cross

A He was medium height, blond hair, shoulder length, light complexion.

Q You say medium height?

A I think he was about five-eight. I'm not sure.

Q Long hair?

A Yes.

Q How old was he in 1972?

A Twenty-five, I think.

Q He was twenty-five?

A I think so.

Q For how many years did Mr. Kaplan know your brother to 1972?

A To the best of my knowledge about four or five.

Q That would make Mr. Lang, your brother, a teenager when he first knew Mr. Kaplan; is that correct?

A Yes.

Q Do you recall testifying at a prior time that your brother was about eighteen or so when he first met Mr. Kaplan?

A I think so.

Q Do you know how old Mr. Kaplan is?

A No, I don't.

Q Do you know he's about--

Ruggerio=cross

MR. SHARGEL: Objection.

THE COURT: Overruled.

Q Do you know he's about over forty years old?
We're talking about approximations.

A Right.

Q So when he first--

MR. SHARGEL: I'll stipulate to his age as
forty-one.

THE COURT: All right.

Q So when your brother first met Mr. Kaplan,
your brother was about eighteen and Mr. Kaplan was in
his middle to late thirties; is that correct?

A Yes.

Q What was the relationship of Mr. Kaplan to
your brother?

A He was like a big brother to him.

Q When you say he was like a big brother, what
exactly was the basis of their relationship, Mrs. Ruggerio?

A Well, they had worked before together in
carpeting and they became very close and therefore, if my
brother had a problem or if he needed anything, he would
call Sammy like he would a very close friend.

Q On January 6th, 1972, Mr. Kaplan just happened
to appear at the residence; is that correct?

Ruggerio-cross

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A Yes.

Q Was that pursuant to any phone calls that Mr. Lang, your brother, made at that time?

A Not that I know of.

MR. KAPLAN: I would ask the Court to take judicial notice of the fact January 6th, 1972, was a Thursday, your Honor.

THE COURT: Very well.

Q What was your brother doing during this period of time? What was his occupation?

A He was unemployed.

Q When was the last time that he was employed?

A I don't know.

Q He was just sitting around the house?

A Yes.

Q Doing nothing?

A Well, he worked side jobs. He didn't have a steady job.

Q He was about 24-25 years of age at this time? Is that correct?

A Yes.

Q And when was the last time that he had a steady job prior to January 1972?

A I don't know any exact date.

Q Did you know that your brother was involved

Ruggerio-cross

1
2 in the sale of narcotics?

3 A No, I did not.

4 Q Did you know that may have been his source
5 of income during this period of time?

6 A No, I did not.

7 Q What was the nature of Mr. Kaplan's business
8 during this period of time?

9 A I don't know.

10 Q How many times did Mr. Kaplan visit your
11 residence?

12 A Unless it was prearranged with my brother,
13 he would stop by when he was in the area or in the neigh-
14 borhood.

15 Q Where did he live?

16 A I don't-- I think it was Brighton Beach.

17 Q You had never been to his house?

18 A No.

19 Q So he would just come over when he was in
20 the area?

21 A Yes.

22 Q When was the last time prior to January 6, 1972
23 that he stopped over the house that you can recall?

24 A I don't remember.

25 Q You have no specific recollection of any time

Ruggerio-cross

1 prior to that that he was over the house; is that correct?

2 A He was over, but I can't tell you when.
3 I don't remember.

4 Q Was it two months, six months, eight months?

5 A No, a week or two before.

6 Q A week or two before. Isn't it a fact that
7 Mr. Kaplan had not been over the house--

8 MR. KAPLAN: Withdrawn.

9 Q Do you know what Mr. Kaplan's dress was
10 that day?

11 A I don't remember.

12 Q You don't recall if he was wearing blue jeans
13 and a white tee shirt?

14 A I don't remember.

15 Q You say Mr. Kaplan was a friend of the family,
16 a friend of your brother's; is that correct?

17 A Yes.

18 Q Yet you have no idea nor have you had any
19 conversations, I take it, about Mr. Kaplan's employment
20 during this period of time; is that correct?

21 A Yes.

22 Q You don't know?

23 A No, I don't. He was my brother's friend,
24 not mine.
25

Ruggerio-cross

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Q But you invited him to your wedding?

3

A Yes.

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Q What exactly was it that your brother did with Mr. Kaplan?

6

7

A They had previously worked together in carpeting, and they still did occasionally.

8

9

Q Mr. Lang, your brother, didn't work, you told us, during this period of time prior to January 1972.

10

A Yes, he worked side jobs.

11

Q Not with Mr. Kaplan?

12

A I don't know.

13

14

Q With respect to their big brother relationship, did they go to bars together, drink together?

15

A I don't know.

16

17

Q Did they go out with women together, double-date together?

18

A I don't know.

19

20

Q You really don't know what the basis of the relationship that they had was, do you?

21

22

A It started from when they worked together, what they did together is not my business.

23

24

25

Q We know they worked together one time, but you don't know after that time what the basis of relationship was between your brother and Kaplan?

Ruggerio-cross

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A Just a friendship.

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Q Mrs. Ruggerio, did you know in January --
prior to January, 1972, that your brother was taking
narcotics?

6

A Yes.

7

Q Did you know that he was taking heroin?

8

A No.

9

Q He kept that from you, didn't he?

10

A Yes.

11

12

Q Did you know that he was involved in a nar-
cotics transaction or narcotics trade?

13

A No.

14

Q He kept that from you, didn't he?

15

A Yes.

16

17

Q In fact, he didn't discuss with you his busi-
ness relationship with Mr. Kaplan, did he?

18

A I don't--

19

20

Q Did he discuss with you any business transac-
tions that he had with Mr. Kaplan?

21

A No.

22

23

Q So you wouldn't know if he was involved in
the narcotics business with Mr. Kaplan, would you?

24

A No.

25

Q You don't know from whom he got the narcotics?

Ruggerio-cross

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2 A No.

3 Q Isn't that correct? You don't know who his
4 supplier was, do you?

5 A No.

6 Q This would be a matter he would keep from you,
7 wouldn't he?

8 A Yes.

9 Q These other people, these two other people
10 that you described to us, you said that they were about the
11 same age as your brother; isn't that correct?

12 A No, I did not.

13 Q During this period of time--

14 A I said the woman was as old as I was, approxi-
15 mately.

16 Q How old were you at that time?

17 A Twenty-one, twenty-two.

18 Q The same approximation, three or four years
19 difference, and the man was three years older?

20 A Approximately.

21 Q He would be twenty-four-twenty-five?

22 A Yes.

23 Q So they would be about the same age as your
24 brother?

25 A Yes.

Ruggerio-cross

1
2 Q They would be contemporaries of your brother?

3 A Yes.

4 Q Not like Mr. Kaplan, an older man; is that
5 correct?

6 A Yes.

7 Q Do you recall what time of the afternoon that
8 Mr--

9 MR. KAPLAN: Withdrawn.

10 Q Do you recall what time of the afternoon this
11 man that you don't recall what he looks like, came in?
12 In other words, not Mr. Kaplan and not the two others,
13 the other man. Do you recall what time he came in?

14 A No.

15 Q You have no specific recollection of the
16 time?

17 A No, I don't.

18 Q But you know, don't you, that he was upstairs
19 in the room with Mr. Kaplan?

20 A Yes.

21 Q This man, Mr. Kaplan, and your brother were
22 in the same room together?

23 A Yes.

24 Q The same bedroom?

25 A Yes.

Q That was your brother's bedroom?

Ruggerio-cross

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A Yes.

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Q You weren't present in that bedroom?

4

A No.

5

Q And this man and woman were not present in

6

that bedroom; isn't that correct?

7

A Yes.

8

Q You don't know what went on in that bedroom,

9

do you?

10

A No.

11

Q In fact, you don't know if there was a nar-

12

cotics transaction that took place in that bedroom, do you?

13

A No.

14

Q You would have no way of knowing?

15

A No.

16

Q In fact, your brother made it a point of

17

keeping these matters away from you?

18

A Yes.

19

Q He wanted to keep you ignorant of these mat-

20

ters?

21

A Yes.

22

MR. SHARGEL: I object.

23

THE COURT: You're getting repetitious.

24

I'll sustain the objection.

25

MR. KAPLAN: I have no further questions.

Ruggerio-cross

THE COURT: Any redirect?

MR. SHARGEL: No redirect.

THE COURT: You can step down. Thank you,
Miss Ruggerio.

(Witness excused)

MR. SHARGEL: Might we approach side bar?

THE COURT: Yes.

(The following occurred at side bar.)

MR. SHARGEL: I would like to know, give
your Honor an offer of proof with the next witness,
because of the problems we have been having.

THE COURT: Yes.

MR. SHARGEL: The next witness, Mr. Tobias
Gold, his name was mentioned at the last trial.
Mr. Gold will testify that on January 6, 1972, he
received a telephone call from Sam Kaplan asking
about a job for this fellow and that Mr. Kaplan had
sought a job for this individual.

THE COURT: What?

MR. SHARGEL: Sought a job for this individual.

Now, this is part of the res gestae, part of
the activity of the afternoon, part of the happening
in the room when Allevia testified that Kaplan
would say one thing. We have an independent witness

1 saying Kaplan was saying another thing and that he
2 called him back the next day and said to Mr. Gold,
3 Kaplan said to Mr. Gold, "The fellow was arrested,
4 can't have a job for him."

5 This is the very same transacton that Alleva
6 testified to. It's not a self-serving declaration
7 in the sense it's an independent witness testifying
8 to part of the occurrence.

9 MR. KAPLAN: Might I be heard?

10 THE COURT: Yes.

11 MR. KAPLAN: First of all, the res gestae
12 doctrine has been discredited in the federal courts.
13 I don't know under what theory it's offered. It's
14 plain, unadulterated hearsay. The Government wants
15 to get in by indirection, by getting in by direction,
16 by having the defendant testify. Now, I can't
17 cross-examine them on the basis of what Mr. Kaplan
18 said.

19 MR. SHARGEL: Why not?

20 MR. KAPLAN: They are hearsay statements.

21 MR. SHARGEL: Might I draw an analogy.

22 MR. KAPLAN: Your Honor has been quite
23 liberal in this regard in introducing the testimony.

24 MR. SHARGEL: A man walks into a bank with
25 forged securities and he said, or he tries to sell

1 his forged securities, and an agent-buyer said that
2 "He was going to sell them to me for ten cents on the
3 dollar," which would indicate there's a guilty state
4 of mind. Someone else who was also present at that
5 time said, "No, that man said he was going to sell
6 at ninety-five cents on the dollar," to show that
7 he didn't have a guilty state of mind.

8 I'm not emphasizing state of mind. I'm
9 saying it's part of the transaction that an inde-
10 pendent witness will testify as to what the man
11 said--

12 THE COURT: I suppose, Mr. Kaplan, not for
13 the truth of what Mr. Kaplan said, this could have
14 been just a cover, to have some other explanation
15 for his presence there.

16 MR. KAPLAN: Your Honor, it's still hearsay.
17 It's for the truth, the fact they are offering for
18 fact and I think Mr. Shargel is going to argue the
19 man made a phone call for an express purpose, to
20 try to get him a job. That's the only purpose in
21 making that phone call. That's the argument that
22 is going to be made by the defense. He's going to
23 use it for the truth of the matter.

24 MR. SHARGEL: The fact it was made--

25 MR. KAPLAN: We already have the fact,

1 admission by Lang the phone call is made. Why do
2 we have to pile hearsay on hearsay? It seems he
3 is prejudicing the Government by allowing all this
4 hearsay in.

5 THE COURT: It's not for the truth of the
6 facts set forth. I'll allow it.

7 (The following occurred in open court.)

8 MR. SHARGEL: The defense calls Tobias Gold.

9
10 T O B I A S G O L D, called as a witness, having
11 been duly sworn by the Clerk of the Court, testified
12 as follows:

13 THE CLERK: Full name, please.

14 THE WITNESS: Tobias Gold, G-o-l-d.

15 DIRECT EXAMINATION

16 BY MR. SHARGEL:

17 Q Mr. Gold, where do you reside?

18 A 11 Beaumont Street, Brooklyn.

19 Q What is the nature of your business, sir?

20 A Carpet and floor covering sales and installa-
21 tions.

22 Q How long have you been in that business, with
23 that industry?

24 A About twenty-five years.

25 Q Do you know Mr. Sam Kaplan?

Gold-direct

A Yes.

Q Can you identify him in the courtroom?

A Right there (indicating).

Q How long have you known Mr. Kaplan?

A Probably over twenty years.

Q How did you meet Mr. Kaplan?

A We were both carpet mechanics. He had worked for Kaufman Carpet. I worked for another firm. We lived in the same area, and we sometimes used to do installations together, carpet installations.

Q I draw your attention, Mr. Gold, to December of 1971. Do you remember ever arranging a job for Frank Lang?

A Yes.

MR. KAPLAN: I object unless we have Mr. Shargel not lead the witness.

MR. SHARGEL: That was a foundation question.

THE COURT: Yes, all right, on that basis I'll allow the question.

Q Can you tell us about the job for Frank Lang in December of 1971?

A Well, Sam Kaplan had called me and asked me whether I needed a carpet mechanic. I said yes, because that was our busy season before Christmastime. He said he

Gold-direct

had somebody, Lang, that he wanted to give a job to, carpet mechanic. I could use him. He said he would have him the next day. The next day Lang never showed up.

I called Sam up and I told him he never showed up to work. Well--

MR. KAPLAN: Object to conversations.

MR. SHARGEL: I'll abandon that line.

THE COURT: Back in December, I don't think that has much relevance.

Q I direct your attention to January of 1972, specifically January 6th, 1972. Did you receive a phone call from Sam Kaplan on January 6, 1972?

A I don't really know exactly the date, but I got a phone call in my answering machine, a message from Sam Kaplan saying I should call him back, which I did that night, and he said, "Forget about it. I was going to ask you to give this Lang fellow a job again, but he got arrested today." That was it.

MR. SHARGEL: I have no further questions.

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mr. Gold, sir, you said you received a second phone call from Mr. Kaplan; is that correct?

A Yes, sir.

1 Q He said to you, "Forget about it. Lang got
2 arrested"?

3 A Yes.

4 Q The previous day?

5 A No, that day he said he got arrested.

6 Q Did Mr. Kaplan tell you that he also was
7 arrested the same--

8 A He mentioned-- Yes.

9 Q Sir, would it be a fair statement that you
10 cannot particularize the date in question?

11 A No.

12 Q In other words--

13 A He said it happened that day. That's all
14 I know-- Exactly the date, I don't know.

15 Q In other words, sir, this phone call could
16 have taken place after January 6th, 1972?

17 A Yes.

18 Q It could have taken place a week after--

19 A No, I doubt that, because I came back from va-
20 cation Christmas week. This is the week after, which is our
21 slowest time of the year immediately after Christmas and
22 New Year's. Our season like ends. I know it was after
23 I came back from my vacation.

24 Q Could it have happened two days later?

25 A Yes, it's possible.

Gold-cross

MR. KAPLAN: Thank you. No further questions.

REDIRECT EXAMINATION

BY MR. SHARGEL:

Q Did Mr. Kaplan tell you Mr. Lang got arrested more than once or more than one occasion?

A No, this was the only time.

MR. SHARGEL: No further questions.

THE COURT: You can step down.

(Witness excused)

MR. SHARGEL: At this time, may it please the Court, the jury, the defense rests.

THE COURT: Is there going to be any rebuttal?

MR. KAPLAN: No rebuttal, your Honor. The Government rests.

THE COURT: I'll ask the jury to go back to the jury room. We'll be a few minutes.

Don't talk about the case.

(The jury leaves the courtroom.)

MR. SHARGEL: At this time I most respectfully move, pursuant to Rule 29 of the Federal Rules of Criminal Procedure for a judgment of acquittal at the end of the entire case.

THE COURT: I suppose it's a jury question. Motion denied.

MR. LA ROSSA: May it please the Court, the defendant moves under Rule 29 for a judgment of acquittal on the two counts before the Court.

THE COURT: Denied. Do you have any witnesses?

MR. LA ROSSA: Yes, I do. May I have just a few moments? That is all it will be.

THE COURT: Yes, we will take a five-minute recess.

(Short recess.)

(The jury thereupon returned to the courtroom at 12:00 o'clock noon.)

THE COURT: Call your witness.

MR. LA ROSSA: Yes, sir. I call Mrs. Patricia Ruggiero.

P A T R I C I A R U G G I E R O , called as a witness on behalf of the defendant, having been first duly sworn by the Clerk of the Court, testified as follows:

THE CLERK: What is your full name? Speak a little louder so we can all hear you.

THE WITNESS: Patricia Anne Ruggiero,
R-u-g-g-i-e-r-o.

DIRECT EXAMINATION

BY MR. LA ROSSA:

Q Mrs. Ruggiero, what is your maiden name?

Ruggiero-direct

13

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A Patricia Lange.

3

Q Are you the sister of Frank Lange?

4

A Yes.

5

Q Do you know Mr. Kaplan?

6

A Yes.

7

Q Do you see him sitting here in court?

8

A Yes.

9

Q How long do you know Mr. Kaplan?

10

A About six years.

11

Q How did you know Mr. Kaplan?

12

A Well, he is a friend of my brother's. He is

13

also a friend of my family.

14

Q Tell me what you mean by a friend of your brother's

15

Do you know how the relationship between your brother and

16

Mr. Kaplan originated?

17

A Yes. They worked together doing floor work,

18

on floor carpeting.

19

Q Do you know where -- do you know whether your

20

brother worked for Mr. Kaplan in laying this floor carpeting?

21

MR. KAPLAN: I will object to leading.

22

THE COURT: I will allow it. Go ahead.

23

THE WITNESS: What is the question?

24

Q Did your brother work for Mr. Kaplan?

25

A Yes.

1
2 Q Now, you say that he was also a friend of the
3 family. Will you tell us what you mean by that? For example,
4 have you ever met his wife?

5 A Yes, I have.

6 Q Do you know whether he has any children?

7 A Yes, he has three children.

8 Q Have you ever met the children?

9 A Yes, I have.

10 Q Tell us how many times you have seen Mr. Kaplan
11 at your home?

12 A Many times.

13 Q Did he socialize? When I say socialize I mean
14 did he have coffee with your mother and father at times?

15 A Yes.

16 Q Did he ever visit your home on holidays?

17 A Yes.

18 Q What holidays would he visit your home?

19 A Christmas, Thanksgiving and New Year's.

20 Q Do you recall the day that the agents arrested
21 your brother?

22 A Yes.

23 Q Were you home that day?

24 A Yes.

25 Q Were you employed at that time?

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A Yes.

Q Tell me what you were doing at that time, if
you recall.

A Working?

Q Yes.

A I worked for a law office.

Q Were you a private secretary for a law firm?

A Yes.

Q How long have you worked for this law firm?

A Almost five years.

Q What is the name of the law firm?

A Yorkston W. Grist.

Q Mrs. Ruggiero, where is that law firm located?

A 150 Broadway.

Q Are you a legal steno?

A No.

Q Are you a private secretary?

A Yes.

Q Now, on that particular day were you home?

A Yes, I was.

Q Was there a reason why you were home?

A I was ill.

Q When you say ill, do you mean did you have a
virus, or cold, or some such thing as that?

1
2 A Yes.

3 Q Do you recall seeing Mr. Kaplan on that
4 particular day?

5 A Yes. He stopped over the house about 12:30 in
6 the afternoon.

7 Q Will you tell us what occurred, if you recall.

8 A Well, he came into the house where my brother,
9 my mother and I had coffee in the kitchen.

10 Q Was there a conversation, if you recall, he had
11 with your brother at that time sitting at the kitchen table?

12 A Yes.

13 Q What was the conversation?

14 A He was trying to convince my brother --

15 MR. KAPLAN: I will object to that, your Honor.

16 THE COURT: Sustained.

17 MR. LA ROSSA: May I make an offer of proof?

18 THE COURT: At the side bar, you may.

19
20 (continued next page)

IDS:jk
1-5 6

Ruggiero-direct

;118

(The following occurred at the side bar between the Court and counsel.)

MR. LA ROSSA: May it please the Court, the man is being charged with aiding and abetting Mr. Lange in the sale of this particular drug. His state of mind becomes very important to explain --

THE COURT: What will she testify to?

MR. LA ROSSA: That they had a conversation. Kaplan told him he should get a job. And based upon that he offered to call one of the old carpet companies that he had experience with.

And the two of them went up to Lange's bedroom where there was a phone located to call.

THE COURT: What is your position on it?

MR. KAPLAN: It is hearsay that he was going up to make a phone call.

MR. LA ROSSA: I am offering proof he was trying to get him a job, what his purpose was in being in the house and his state of mind at that time.

The Court has allowed the fact that there were prior conversations to come in, and to explain what happened in the bedroom that day I most respectfully submit that this type of explanation is just as important to show why Kaplan was in the bedroom with

1
2 a man twenty years his junior.

3 THE COURT: Yes, I think it is important for
4 that statement. I will allow it in for that purpose.

5 (The following occurred in open court.)

6 MR. LA ROSSA: May I rephrase the question?

7 THE COURT: Yes.

8 Q Did Mr. Kaplan and your brother have a conver-
9 sation at the table in front of you?

10 A Yes.

11 Q Will you tell us what the conversation was about?

12 A Mr. Kaplan was trying to convince my brother to
13 go back to work.

14 Q And was that conversation also on the phone that
15 Mr. Kaplan was offering your brother anything --

16 A Yes.

17 MR. KAPLAN: I object to that. It is leading.

18 THE COURT: Yes, I think the witness ought to
19 tell us what she heard.

20 Q Tell us what you recall of that conversation as
21 best you can, please.

22 A Well, Mr. Kaplan was trying to tell my brother
23 that it would be better if he went back to work again. He
24 would be busy. It would give him something to do.

25 Q Was there any talk about where your brother
should work?

1 A It was doing floor carpeting. And he said --
2 and Mr. Kaplan said he knew a place where he could get him a
3 job.
4

5 Q Did he offer to do anything for your brother
6 with respect to getting him the job?

7 A Yes. He said he would make a phone call and
8 call the store, you know, where the job was.

9 Q Now, did there come a time when he and your
10 brother left that kitchen for the purpose of making that
11 phone call?

12 A Yes.

13 Q Where did they go?

14 A Up to my brother's bedroom.

15 Q Now, prior to the time that they went up to the
16 bedroom to make that phone call --

17 MR. LA ROSSA: I withdraw the question.

18 Q Who else was in the house that day?

19 A My mother.

20 Q Did anyone else come to the house after
21 Mr. Kaplan came?

22 A Yes.

23 Q Who?

24 A A man and woman.

25 Q Do you know who they were?

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A No, I don't.

Q Were they friends of your brother's?

A Yes.

Q Did your brother talk to these two?

A Yes.

Q Was Mr. Kaplan sitting in the kitchen during this time?

A Yes, he was.

Q What, if anything, did your brother do with these two people, if you know?

A Well, he was up in his room. Then he asked me if I would mind if they would stay in my room while Mr. Kaplan made the phone call about the job.

Q And did that occur?

A Yes.

Q Did there come a time when antoher man came into the house?

A Yes.

Q Do you recall who that man was?

A Vaguely.

Q Do you see him here?

A I am not sure.

Q Can you describe what he looked like?

A He was a medium build. He had amoustache and

1 a dark complexion, you know.

2 Q How long was that man in the house before you
3 saw him leave again, if you did?

4 A Not long. About ten minutes.

5 Q Who did he leave with, if he did?

6 A My brother.

7 Q Now, after he left with your brother did you
8 see Mr. Kaplan again?

9 A Yes.

10 Q Where?

11 A He came into my room.

12 Q What happened?

13 A And he told me he had to leave, and to tell my
14 brother he should call him later.

15 Q And then what happened?

16 A Then he left.

17 Q Mr. Kaplan left at that point?

18 A Yes.

19 Q When was this man and woman -- when you say a
20 man and woman can you describe them? How old were they, this
21 man and woman?

22 A The woman was about my age. And the man was
23 about two or three years older than me.

24 Q Will you tell us what about your age means?
25

1 A Well, at the time about 21.

2 Q So in other words we are talking about a 21 or
3 22 year old girl and about a 24 or 25 year old young man?
4

5 A Yes.

6 Q After your brother left the house with this man
7 with the moustache what happened then?

8 A Then Mr. Kaplan came into my room and he told
9 me he was leaving and to tell my brother he would speak to him
10 later. Then Mr. Kaplan left.

11 Q And then what happened to this young man and
12 woman that were in your bedroom?

13 A Well, they were sitting there and they got up.
14 And they were looking out the window.

15 So they said: Something is wrong. And they
16 left my house, too.

17 Q How did they leave your house?

18 A Through the kitchen door, the back door.

19 Q By the way, since 1971 how many times have you
20 seen Mr. Sam Kaplan?

21 A A few times.

22 Q Have you seen his children?

23 A Yes, I have.

24 Q Have they been to your home?

25 A Yes, they have.

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Q Has his wife been to your home since then?

A Yes.

Q When did you get married, Mrs. Ruggiero?

A September 8th.

Q In this year?

A 1973.

Q Did your family invite Mr. and Mrs. Kaplan to the wedding?

A Yes.

Q And do you consider Mr. Kaplan and Mrs. Kaplan a friend of the family as you sit there right now?

A Yes.

Q And do you know how many years your brother worked with Mr. Kaplan?

A No, I don't.

Q Was it a number of years?

A Yes, it was a few.

Q What was their relationship, if you can describe it?

A Well, they saw each other often.

Mr. Kaplan dropped by the house, you know, on various occasions. And they had worked together. And there was no set time when Mr. Kaplan came over. He always stopped by if he could.

1
2 Q How would you describe the relationship between
3 the two of them, if you could?

4 A Well, I would say it was close because Mr. Kaplan
5 like looked after my brother. He acted like a big brother.
6 He was always trying to guide him to help him out.

7 Q Do you know whether that young man and young
8 woman got out of the back of the house?

9 A If they got out? Yes.

10 Q Have you seen Mr. Kaplan since the --
11 MR. LA ROSSA: I withdraw the question.

12 Q Did the agents come into the home after that?

13 A Yes, they did.

14 Q How many?

15 A Two.

16 Q And did they search the house?

17 A No.

18 Q Did they ask where your brother's bedroom was?

19 A No.

20 Q Did they ask you any questions?

21 A Yes, they did.

22 Q Did they ask you about the young couple that
23 were in the house?

24 A No.

25 Q Did you volunteer that information?

1
2 A No.

3 Q Was that because you didn't want it come to the
4 attention --

5 MR. KAPLAN: Objection. That is again trying to
6 elicit testimony --

7 THE COURT: Sustained.

8 MR. LA ROSSA: I have no further questions.

9 CROSS-EXAMINATION

10 BY MR KAPLAN:

11 Q Mrs. Ruggiero, my name is Kenneth Kaplan and I
12 am an Assistant United States Attorney.

13 You say you know Samuel Kaplan for how many
14 years?

15 A About five or six.

16 Q Where did you first meet him?

17 A At my home.

18 Q At your home?

19 A Yes.

20 Q He was a friend of Frank's at that time?

21 A Yes.

22 Q Can you tell us how old a man Mr. Kapian is?

23 A I don't know.

24 Q You have no idea how old he is?

25 A I am not a good judge.

1
2 Q Give us an approximation of how old he is.

3 MR. LA ROSSA: If she is guessing I object to
4 her interpretation. The jury can do the same thing.

5 THE COURT: She has had a longer relationship.
6 I will allow her answer to stand and the jury may
7 observe the defendant.

8 A About mid-40's.

9 Q He is in his mid-40's?

10 A Yes.

11 Q Can you tell us at the time in January 1972 how
12 old your brother was?

13 A 25.

14 Q So that five or six years before that he would
15 be about 19 and Mr. Kaplan would be about in his late 30's
16 or early 40's?

17 A Yes.

18 Q They had a close relationship, you say?

19 A Yes.

20 Q Do you know what they did in the furtherance of
21 this close relationship?

22 A I don't understand.

23 Q Where did they go?

24 A Well, they worked together. They saw each
25 other. He visited the house.

1
2 Q Do you happen to know where they went? You say
3 they socialized together?

4 A Yes.

5 Q Where did they go to socialize?

6 A Well, all I know they socialized in my home.

7 Q He just came to your home?

8 A Yes.

9 Q At that time what was your brother doing?

10 A He wasn't working.

11 Q He wasn't working? This was when he was about
12 19?

13 A Oh, excuse me. At that time?

14 Q Yes.

15 A He was working.

16 Q What was he doing?

17 A Floor carpeting.

18 Q Where?

19 A I think he was with Felures.

20 Q How long did he work there? Do you know?

21 A I don't know.

22 Q Well, did there come a time when he became
23 unemployed?

24 A Yes.

25 Q When was that?

1
2 MR. LA ROSSA: Objection.

3 THE COURT: I will allow it.

4 A I don't know.

5 Q You don't know when he became unemployed?

6 A I don't know exactly.

7 Q Over this period of time how often would
8 Mr. Kaplan come over to the house?

9 A Well, I couldn't really say, like he would drop
10 by when he was in the neighborhood or if he wanted, you know,
11 to stop and see the family.

12 Q Well, if he did know the family would it be
13 fair to say he didn't know the family prior to the time he
14 met Frank?

15 A Yes.

16 Q He knew the family through Frank? He was a
17 friend of Frank's; is that right?

18 A Yes.

19 Q When he first started this relationship with
20 Frank Mr. Kaplan was in his late 30's or in his early 40's
21 and your brother was about 19; is that correct?

22 A Yes.

23 Q What did he do when he came over to the house?

24 A He sat and talked.

25 Q He just sat and talked?

1
2 A Yes.
3 Q When did he come over?
4 A I don't understand.
5 Q Any particular days of the week he would come
6 over?
7 A No.
8 Q Was your brother home when he came over?
9 A Usually.
10 Q He just came over to visit your brother?
11 A Yes.
12 Q Now, can you tell us in January of 1972 -- will
13 you give us a physical description of your brother?
14 A About five eight, blond hair, light complexioned.
15 Q Can you describe to us the length of his hair?
16 A Oh, it was sort of long.
17 Q Sort of long. Would you say it was as long as
18 your hair?
19 A No.
20 Q A little shorter than your hair?
21 A Much shorter.
22 Q Didn't he have long hair?
23 A Not that long.
24 Q A little shorter than yours?
25 A About ear-length or shoulder length.

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Q Somewhat on his shoulders?

A Yes.

Q And he had the bedroom upstairs where he lived?

A Yes.

Q Will you describe that room for us?

A In what way?

Q Well, give us a description of the room. Was it just four walls with no furniture in it?

A No, he had a bed.

Q He had a bed?

A Yes.

Q Describe the bed.

A It was a full-sized bed. He didn't have the box spring.

Q Isn't it true that he just had a mattress on the floor?

A Yes.

Q Describe the appurtenances in that room?
The light.

A He had a regular light.

Q Just a regular light?

A Yes.

Q What were the colors of the walls?

A They were different colors.

1 Q Different colors for each wall?
2 A Yes.
3 Q Would it be fair to say he had psychedelic
4 light in the room?
5 A No.
6 Q He didn't have psychedelic lights?
7 A No.
8 Q Did he have any psychedelic posters or psyche-
9 delic drawings on the walls?
10 A Yes.
11 Q That would be fair to say?
12 A Yes.
13 Q Now, in the earlier years of relationship between
14 Sam Kaplan and Frank Lange, your brother --
15 A Francis.
16 Q Francis. Was he known by a nickname, by the
17 way?
18 MR. LA ROSSA: Objection.
19 THE COURT: I don't understand the nature of
20 that objection.
21 MR. LA ROSSA: It has no relevance.
22 THE COURT: Go ahead.
23 THE WITNESS: Will you repeat the question?
24 Q Was he known by a nickname?
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A Yes.

Q What was that?

A Well, he had a few: Chuch, Whitey, Frankey,
Franny, --

Q Was he known as Chuchu or Chocho, something like
that?

A No.

Q What did Mr. Kaplan call him?

A He called him Chuch.

Q How long did he have this nickname?

A Since he was young. My grandmother gave it to
him.

Q Would you say your mother knows Mr. Kaplan very
well?

A Yes.

Q Your father?

A Yes.

Q Your father?

A Yes.

Q Do you know what Mr. Kaplan was doing during
this time? What type work he had.

A No, I don't know.

Q You don't know if he was working?

A I don't know.

1
2 Q By the way, what was the physical description of
3 that man who came in after that man and woman?

4 A Medium build, darkish complexion. He had a
5 moustache, that is all.

6 Q Was he wearing any clothes that might be
7 identifiable or unusual?

8 A I don't remember.

9 Q Would you say the primary characteristic was
10 the moustache? You happen to remember that particular
11 characteristic.

12 A Well, that you notice when you look at a
13 person.

14 Q You are sure of that?

15 A Yes.

16 Q Will you please look around the courtroom and
17 tell us whether you see that man somewhere in this courtroom?

18 A No, I don't know.

19 Q You don't know if you see him or not?

20 A No.

21 Q Is there someone that looks like him?

22 A I don't remember the face.

23 Q What was your brother doing during this period
24 of time?

25 MR. LA ROSSA: Objection.

1 Q What type of employment did he have?

2 THE COURT: I will allow that.

3 Q (Continuing) What type of employment did your
4 brother have during this period of time?

5 A He wasn't working.

6 Q What was he doing?

7 A Nothing. Well, he did do side jobs like
8 occasionally for a friend or, you know, for a friend of a
9 friend. He would go into a house and install carpeting or
10 tile.

11 Q But most of the time he was doing nothing; is
12 that correct?

13 A Yes.

14 MR. KAPLAN: May I approach the side bar, your
15 Honor?

16 THE COURT: Yes.

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18 (continued next page)
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Ruggiero-cross

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2 MR. KAPLAN: May I approach the side bar your
3 Honor.

4 THE COURT: Yes.

5 (The following discussion occurred at the side
6 bar between the Court and counsel.)

7 MR. KAPLAN: Your Honor, I intend to cross-
8 examine on various -- pertaining to the fact he was
9 selling drugs and the fact that he is deceased.

10 MR. LA ROSSA: I object to both of those, your
11 Honor.

12 THE COURT: What was the cause of his death?

13 MR. LA ROSSA: Overdose of drugs.

14 MR. KAPLAN: I think it is quite relevant in
15 that we will find what type of man Frank Lange was
16 and what Mr. Kaplan was doing there, I think Mr. LaRossa
17 opened up the whole can of beans.

18 MR. LA ROSSA: What this witness knows of the
19 defendant Lange has nothing to do with what Kaplan
20 knows about him. You can't charge Kaplan with the
21 subjective knowledge of what his sister would have
22 known.

23 MR. KAPLAN: Apparently Kaplan knew it and we
24 will then see it in its proper light --

25 MR. LA ROSSA: This is of a negative character

as to one who is not in the case at the present time but who is charged with aiding and abetting --

THE COURT: I do not see how we can avoid it now. This is in the case. We are talking about the relationship of the older man with the younger man --

MR. LA ROSSA: Kaplan will take the stand. Let him ask Kaplan. What Kaplan knows about it is important and not this girl.

THE COURT: I think the kind of young man he was is important here.

Now this is susceptible of the fact that Kaplan was going to straighten him out and help him because he was sorry for him, or susceptible of the inference that the defendant was using him to push drugs. But I do not see how we can avoid it since we have gone this far.

MR. LA ROSSA: I will note my objection.

THE COURT: Because of death, I do not see it's of any significance here. It can only create prejudice.

MR. KAPLAN: Thank you.

(The following occurred in open Court.)

Q Mrs. Ruggiero, you said there was a conversation between the defendant Kaplan and Lange, your brother?

A Yes.

Ruggiero-cross

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Q Was it in the kitchen?

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A Yes.

4

Q Concerning a job?

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A Yes.

6

Q And where was the job? Do you know?

7

A No, I don't.

8

Q Do you know if Mr. Kaplan had a job at that

9

time?

10

A I don't know.

11

Q By the way, do you know what day of the week

12

this was?

13

A I don't remember. I think it was a Tuesday.

14

I'm not sure.

15

MR. KAPLAN: I would ask the Court to take

16

judicial notice of the fact that this was a Thursday,

17

December 6th.

18

THE COURT: All right, subject to check we

19

will assume it was a Thursday.

20

Q Now, you said that Mr. Kaplan knew your brother

21

for some six years? Is that correct?

22

A Yes.

23

Q Were there other times when he would try to

24

get him a job?

25

A Yes.

Q Do you know if Mr. Kaplan was working at those times?

A I don't know.

Q You don't know if Mr. Kaplan was ever working, do you?

A Well, he worked with my brother.

Q Well, that was a long time ago, wasn't it?

A Yes.

Q Is there any particular reason why Mr. Kaplan wanted to get a job for your brother?

A They were good friends. Like I said before he tried to help my brother.

Q Just because he liked him? Is that right?

A Yes.

Q Can you tell us if -- withdrawn.

Can you tell us if you know anything about your brother's involvement in the drug habit?

MR. LA ROSSA: Objection.

THE COURT: Overruled.

THE WITNESS: Would you repeat that.

MR. KAPLAN: Mr. Simon?

(Record read.)

A Yes.

Q Did you know that he was purchasing narcotics?

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A No.

Q Did you know that he was selling narcotics?

A No.

Q Did you know he was using narcotics?

A Yes.

Q Did you know he was using heroin?

A No.

Q What type of naricotics did you know he was using?

A I didn't.

Q You didn't know he was using any narcotics?

A I knew he was using but I didn't know what.

Q Did he ever tell you he was using narcotics?

A I think so.

Q Did he ever tell you he was using heroin?

A No.

Q He never told you or you don't know?

A He never told me.

Q In other words, you don't know if he was using
heroin.

So * would be fair to say that Mr. Lange, your
brother, didn't want to make it known in the family that he
was using heroin? Is that correct?

(Witness indicates.)

THE COURT: The witness is shaking her head.

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Ruggiero-cross

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2 Do you want to take a little break, Madam?

3 We will take a few minutes recess while the
4 witness composes herself.

5 (Short recess.)

6 (continued on next page)

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Ruggiero-cross

THE COURT: Bring the jury in, please.

THE CLERK: Yes, your Honor.

(The jury entered the jury box.)

CROSS EXAMINATION

BY MR. KAPLAN:

Q Mrs. Ruggiero, you were talking about a man and a woman in the house?

A Yes.

Q Had you ever seen these two people before?

A No.

Q How long were they there?

A Excuse me?

Q How long a period of time were they in the house?

A Maybe an hour.

Q An hour with you or an hour with Frank alone?

A An hour altogether.

Q Can you tell us exactly where they were each segment of the hour, if you know?

A They came in and went upstairs with my brother to his room and then they came and sat in my room while my brother was in the bedroom with Mr. Kaplan.

They looked out the window and they left.

Q When you say the bedroom, what room are we talking about, your brother's room?

A They came in my bedroom after being in my

1
2 brother's room.

3 Q They were in your brother's room?

4 A Yes.

5 Q Then they left?

6 A No, they were in my brother's room and came in
7 my room and then they left.

8 Q And then another man with a moustache came?

9 A Yes.

10 Q Were you ever present in the room, your brother's
11 room, with the man with the moustache, Mr. Kaplan, and your
12 brother?

13 A No.

14 Q You don't know what went on inside that room?

15 A No.

16 Q Would it be fair to say you don't know who don't
17 know who sold your brother narcotics?

18 A I don't know anything about that.

19 MR. LA ROSSA: Objection.

20 Q You stated before you knew your brother was
21 using narcotics?

22 A Yes.

23 Q You don't know who sold him the narcotics?

24 A No.

25 Q You don't know if Mr. Kaplan was selling them.

1
2 MR. LA ROSSA: Objection.

3 THE COURT: Sustained.

4 MR. KAPLAN: I have no further questions, your
5 Honor.

6 MR. LA ROSSA: I have no further questions.

7 THE COURT: Thank you, madam, you won't be
8 required.

9 Next witness, please.

10 MR. LA ROSSA: The defendant calls Samuel
11 Kaplan.

12 S A M U E L K A P L A N , the Defendant herein, having
13 been first duly sworn by the Clerk of the Court,
14 was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY MR. LA ROSSA:

17 Q Mr. Kaplan, how old are you?

18 A Forty.

19 Q You are the Samuel Kaplan who is charged in
20 this indictment before this court?

21 A Yes.

22 Q Are you married?

23 A Yes.

24 Q Do you have any children?

25 A Yes, sir.

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X

UNITED STATES OF AMERICA,

v.

No. 72 CR 851

SAMUEL KAPLAN,

Defendant.

-----X

S I R :

PLEASE TAKE NOTICE that Samuel Kaplan hereby
appeals to the United States Court of Appeals for the Second
Circuit from a Judgment of Conviction entered against him by
the Hon. Orrin Judd, United States District Judge for the
Eastern District of New York, on May 23rd, 1975, wherein the
defendant was convicted of one count of violating Title 21,
United States Code, Section 812, 841(a)(1) and 841(b)(L)(A)
and sentenced upon said conviction to eight (8) years

imprisonment on said count.

Dated: New York, New York
May 23rd, 1975

Yours, etc.

LA ROSSA, SHARGEL & FISCHETTI
Attorneys for Defendant
Office and Post Office Address
522 Fifth Avenue
New York, New York 10036
687-4100

By: _____
GERALD L. SHARGEL
A Member of the Firm

TO:

HON. DAVID G. TRAGER
United States Attorney
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Defendant's Home Address:

50 Brighton 1st Road
Brooklyn, New York

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U. S. ATTORNEY

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Am. J. K. [Signature]